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FAMOUS AMERICAN TRIALS

With an Introductory Essay on
the Reading of Criminal Trials by
SIR ROLAND BURROWS, K.C.

LEITH HILL
EDITION

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To
ERIC MYERS

FOREWORD TO LEITH HILL EDITION

WHEN I wrote this book I was as much interested in crimes and punishment as any other amateur—I had not yet risen (or sunk?) to the status of a professional lawyer—and as weary of the incessant pot-boilings of an all-too-familiar handful of British *causes célèbres*; I wanted never to read about Jack the Ripper or Crippen or “Brides-in-the-Bath” Smith again. So I cast round for some other sphere of criminal interest, and, recalling that a few years previously I had been fortunate enough to discover a new world of literature across the Atlantic (my *Literary Renaissance in America* had introduced to a wide British public the now familiar names of Sinclair Lewis, Eugene O’Neill, Edna Ferber and others), I thought I would see what America could do in the crime line. The chapters which follow must speak for themselves, but I feel that my search was not unsuccessful. It certainly makes a change.

I wish to add this. In several of the cases I describe, the reader will find a lack of reverence for certain American institutions, notably the exuberant eloquence sometimes used by advocates. I should not like it to be thought that I intend by this means to sneer at the community in which these masterpieces of hyperbole and bathos were uttered; in point of fact, by taking a little trouble and choosing one’s barrister carefully, one can hear advocacy equally absurd (if less flamboyant) in many English criminal courts any day. All my life I have tried to improve understanding between Britain and the United States; I did so when we were accepted as the “elder brother” of the pair, and I see no cause to change now that we have become, for reasons infinitely to our credit, the poor relation.

C. E. B. R.

LEYLANDS FARM,
ABINGER COMMON.

FOREWORD ON THE READING OF CRIMINAL TRIALS

By SIR ROLAND BURROWS, K.C.

I HAVE always been given to the reading of accounts of criminal trials. Some authorities seem to think that such a habit is evidence of a depraved mind, but, if it is, I cannot alter the fact. It is a practice which I share with many people who are held out as worthy examples to follow and with the great majority of the public. I think that all those connected with newspapers will say that the police news is the most favoured section of any newspaper. Other topics do from time to time temporarily displace criminal trials from the first place, but such displacement is always temporary.

This interest is not by any means morbid. Some individuals of ill-balanced mind may find in the reading of criminal trials an example to copy, but the ordinary reader is certainly not thereby incited to criminal activity. On the contrary, the realization of the tribulations of prisoners and captives, even in cases where at long last an acquittal has resulted, should be sufficient deterrent for any reasonable individual.

It appears to me when I try to analyze the reasons for my indulgence in that form of literature—for I do not claim to be noticeably different from my fellow-men—that instruction in the art of crime plays no part at all. Sometimes I am struck by the skill and ingenuity of the accused, but even then I am also struck by the fact that all that skill and ingenuity went for nothing. The really successful criminal is he who is never accused, and therefore there can be no report of a criminal trial to give the clue to his success.

The main interest in crime is, I think, twofold. Firstly, because the criminal law is the most obvious of the attempts made by man to adapt the moral law to the needs of everyday life. Moral law represents an ideal towards which we all struggle, even if unsuccessfully. Criminal law represents the standard which the State requires us to attain under pain of punishment in order to ensure that people may live in peace and security and in harmony with one another. We can therefore study the practical enforcement of an attainable moral

excellence. It is true that the criminal law tends to lag behind the moral sense of the community. Many offences are retained which are obsolete. Many offences do not exist, because the legislature is not yet convinced or even aware of the need for creating them. Again, what many reformers forget, the law is often invoked in an attempt to secure a standard of conduct above that which is required by the general sense of the community. It is an evil that men can do wrong with impunity. It is a worse evil that they should be declared to have done wrong when none thinks the worse of them. To use the law to compel an unattainable excellence is a delusive remedy. It must fail and with its failure bring the law into disrepute; and it is necessary and salutary that the law should secure due respect. We are all of us vitally interested in the standard of conduct which the law insists upon.

Secondly, in reading the cases where individuals are accused of particular crimes, we see the practical working of the system and realize the essential requirements of a satisfactory criminal code. It is essential that no man shall be held guilty until he is proved to be guilty. What is sufficient proof is demonstrated by the cases. Sometimes we see the principle violated and turned into the evil practice of not finding anyone guilty if by some ingenious theory in which no one believes it is possible that he might not be guilty. Proof means proof to the satisfaction of reasonable men of the world. Acquittal because men are afraid of drawing the proper conclusion from evidence is merely placing a premium on crime. A criminal trial is a serious investigation of a criminal charge: not a game where the verdict goes to the most ingenious or most plausible of the advocates. Most interesting is the consideration of the offender. Here is a person who has succumbed to temptation. What was the temptation? How was it that he thought that he could do with impunity what others cannot? Did he think at all? Indeed, was he capable of thinking? There one comes against the problem of responsibility.

What standard is to be adopted? In reading the cases it clearly emerges that there must be a standard. There are individuals whom it would be wrong to treat as criminals. On the other hand, to say that succumbing to temptation is in itself proof that the accused does not comply with a true standard of responsibility would be to turn the criminal law into a farce. One criticism I have of the medical profession is that some of its members tend to say that no person who is insane can be held to be responsible and then go on to define

insanity in such a way as to make it difficult to pronounce any human being to be sane. If those who have the responsibility of caring for persons of doubtful sanity would only ask themselves what defence they could set up if their loved ones did acts which the law calls criminal, and would now at once put them out of the way of doing such acts, there would be far fewer charges in which the defence of insanity would be available.

Again, in such trials the habits and customs of the time can be seen from evidence uncoloured by any bias to exaggerate or minimise the social life of the class to which the offender belongs.

All this, it may be said, may form some reason for reading criminal cases which have been tried in England, but why those committed elsewhere? I think the answer lies in this: that it is necessary to keep a sense of proportion. All civilized nations live under similar conditions and are subject to similar temptations. The law varies and the procedure varies. A reader who knows only the English law and English cases may perchance realize that English law may not be the last word in wisdom and that English procedure may be capable of improvement. He cannot, however, realize the respects in which English law needs improvement or the procedure needs change unless he is acquainted with other systems and the success or failure of such systems as compared with ours. The law of the United States on insanity is almost identical with ours, as can be seen from the Thaw case. How would that case have resulted here? The procedure in the United States is in principle the same as ours, but there are differences, and some advocate changes which would bring us into line. In England a plea of guilty to murder must be followed by sentence of death. The judge has no discretion: it is for the Crown to exercise mercy, if mercy is to be exercised. Were we to have degrees in murder, then the judge must have a discretion. Is the case of Leopold and Loeb an example of what might happen here? If so, should we be justified?

In England there is, with rare exceptions, but one appeal, and that only at the suit of a convicted criminal. Once acquitted he is free, nor can the Courts grant a new trial even if he is convicted. A new trial can only take place if the former trial is held not to have been a trial at all; it cannot be ordered for a mistrial, and in such a case the verdict must be upheld or quashed. Some would like to see retrials. Let them consider the case of Sacco and Vanzetti and similar cases, and reconsider their views in the light of the knowledge that such trials give.

I have read the pages which follow with the greatest interest. Those who have already heard of the cases dealt with will welcome a record of what happened: to those who have never yet had the opportunity I commend the perusal. It will give ample food for thought. In any case, they will be full of interest.

JOHN BROWN'S BODY

IT is a matter of general knowledge on both sides of the Atlantic that

John Brown's body lies a-mouldering in the grave,
But his soul goes marching on.

And, though this perhaps is not so widely known, there marches on with John Brown's soul a legend about his life and death, his crime and punishment, which, like so many other nineteenth-century traditions, is more generous to his memory than to the truth. Not that he was not a remarkable man; not that his trial and execution did not help to precipitate great events: all this is true, but nevertheless the John Brown of legend and the John Brown of history are very different people.

The latter, the historical John Brown, had few admirers when he was hanged in 1859 for "treason, and conspiring and advising with slaves and other rebels, and murder in the first degree"; it needed the outbreak of the American Civil War and the victory of the North to save his reputation from mouldering with his body in the grave. One of the chief implications of the legend is that John Brown, who died that the negro might be free, represented in his uncouth, stubborn, rustic personality the prevailing opinion of the Northern States before the Civil War. This is so far from the truth that, to picture John Brown as he really was, one must briefly describe the circumstances in which, and against which, he fought and fell.

In the first sixty years of last century—that is to say, in John Brown's lifetime—the main body of opinion in the North was by no means eager to free the negro slaves in the South. A very small minority, led by William Lloyd Garrison and his friends, certainly accepted with pride the originally opprobrious title of "Abolitionists" and spent their lives seeking to rouse their countrymen to free the slaves—some, like Garrison himself, relying wholly upon moral suasion to do this; others, like John Brown, ready to adopt any means that came to hand. There was also a large group of thoughtful people who loathed slavery but were not prepared to risk serious political consequences by forcing their views on the slave-owning South; their main object

was to ensure that the "peculiar institution," as it was called, did not spread beyond its existing borders. Even Abraham Lincoln, the wisest American of his generation, could claim barely two years before he became President, that "I have on all occasions declared against the disposition to interfere with the existing institution of slavery." If he gradually adopted the view that "this Government cannot endure permanently half-slave and half-free," it was only when negro emancipation offered an obvious means of weakening the South that he finally proclaimed it in the third year of the Civil War.

Outwardly at least, then, most of the North was lukewarm about slavery. Philosophic German immigrants might shake their heads over it as incompatible with the boasted liberty which they had crossed the Atlantic to enjoy, but even they had no wish to find themselves in economic competition with a wave of freed negroes from the South. Like the other industrial and agricultural classes of the North, they recognized the benefits of trading with a South whose prosperity depended entirely on slavery, whether the slaves were used, as in the southernmost States, for cheap labour in the cotton-plantation and rice-fields, or, as in the northerly fringe of the South, were bred for sale to the cotton belt. Even in Boston, the nursery of Abolitionism and so many other "isms," Garrison's meetings were broken up and the speakers assaulted by indignant mobs. The churches, too, though to some extent divided on the matter, subscribed mainly to the sound economic opinion that the negro had been set by Providence in a servile relation to the white races, especially in America, and that, in the words of the saintly Rev. Dr. Joel Parker of Philadelphia, the City of Brotherly Love, slavery exhibited "no evils but such as are inseparable from any other relations in social and domestic life." Sentimentalists recalled numerous cases of negroes who not merely expressed their delight in being slaves, but indignantly refused to accept freedom when it was offered to them, while moralists claimed the well-known attachment of negro Mammies and Uncles to their white superiors as one of the redeeming features of a notoriously shiftless, lazy and improvident people. The contrast, even as late as 1857, between the North, staggering under the depression of economic setbacks, with the apparently prosperous South gives point to the observation of certain historians that the surprising thing was not that slavery lasted so long in the South, but that it did obtain a footing in some of the other States.

The North, however, had two good reasons for endeavouring to restrict the spread of slavery. First, it did not wish to

the rivalry of slave-labour in its own fields and workshops; and, secondly, it was determined to ensure that the South should not again obtain an equal share of power in the Federal Legislature. Every additional Slave State meant more Southern votes; every Free State meant less. One good way of putting the South in its place was to reject its claim that rights in slave-property should be protected all over the Union: several Northern States refused to hand over fugitive slaves to their owners even though the Fugitive Slave Law of 1850 laid it down that a runaway slave not only might, but must, be apprehended in any State and sent back to his master. Incidents arising out of this law galled the pride of Northerners. The whole question came to the boil in 1854 in connection with the Kansas dispute, which also brought John Brown for the first time into the pages of his country's history.

The so-called Missouri Compromise of 1820—a makeshift agreement between the North and South—had roughly limited slavery for the future to the south of a certain geographical line; but when Kansas, which was just north of this line, was organized as a Territory, the Northern politicians agreed, for reasons into which it is unnecessary to enter here, to leave the question of slavery in Kansas to be decided by the vote of its inhabitants. To make sure, however, that these would vote the right way, anti-slavery organizations in the North assisted colonists to settle in the new Territory and provided them with Bibles and firearms as arguments against error. The South could not easily retaliate: Bibles and rifles were plentiful, but it was difficult to persuade slave-owners to transfer their human property to a place where they might soon be prohibited from using it. To compensate for this disadvantage, the pro-slavery inhabitants of the neighbouring State of Missouri poured across the border, staked out claims, genuine or fictitious, in Kansas, and thus qualified themselves to vote on all questions concerning the future conduct of the Territory. So admirably was this manoeuvre executed that, at an election held in March, 1855, to appoint a Territorial Legislature, the pro-slavery party triumphed—many of its members taking the trouble to vote several times under false names while forcibly preventing their opponents from voting at all.

The new Kansas Legislature set to work to pass laws agreeable to Southern tastes. The Free Staters, as the anti-slavery party was commonly called, consoled themselves by protesting against their opponents' electoral methods, by arming themselves to resist the new authority, and by setting up a rival legislative body. Students of democracy will recognize that this

is exactly what happens to-day in Central and South America after bitterly fought elections.

Both parties received encouragement and reinforcements from sympathizers in other States, and John Brown was one of the men who hurried to Kansas from the North. His earlier life had been, if not uneventful, at any rate unheroic. He was born in 1800, the son of a poor Connecticut farmer boasting descent from a Peter Brown who came over in the *Mayflower*. Research has shown that Peter Brown had no sons, but, as John Brown's grandfather had served for a short time in the Revolutionary army, the family might still claim some pride of ancestry. John Brown was brought up on the land; he aspired at one time to the ministry, but a short stay in a Massachusetts training college persuaded him that he aimed too high, and he returned to farming. He married when he was twenty: his first wife dying insane in 1832, he replaced her in the following year. By these two wives he had no fewer than a score of children and, since his first wife occasionally confirmed his belief in spiritualism by appearing to him after her death, his home circle was a crowded one. Several of his first brood of children inherited their mother's insanity, while his own violent obstinacy and exaggerated self-righteousness have led some biographers to suggest that he too acquired certain mental defects from his ancestors.

He was unsuccessful as a farmer, tanner, surveyor, post-master, schoolmaster, land-speculator, and—a curious trade for so Puritanical a nature—as a breeder of racehorses. Bankruptcy at the age of forty-one was followed by the offer of a partnership in a wool-merchant's firm in Massachusetts. Almost simultaneously another wealthy friend, attracted by his Abolitionist views, presented him with a farm at North Elba, in the Adirondack mountains, in order that he might supervise an attempt to settle freed negroes on the land. Though John Brown stimulated the industry of his charges by warning them against drink and tobacco, he could not make efficient farmers of them: leaving his wife and children to look after the farm, he devoted himself to the more promising wool business, which, however, like all his other enterprises, soon failed. The firm was wound up in 1850, but fortunately his partner behaved (so John Brown said) like a "philosopher or a Christian" and shouldered the entire loss.

Thus the first fifty years of his life yielded him nothing but a succession of not always reputable failures, a burden of law-suits brought by aggrieved creditors, an enormous and eccentric family, and an unproductive farm at North Elba. There he

retired to await fresh opportunities, and to brood on the wickedness of negro slavery.

News of the troubles in Kansas reached him both through Abolitionist periodicals to which he subscribed and through letters from some of his sons, who had left home at the end of 1845 in the hope of exchanging the stony soil of North Elba for the fertile pastures of the new Territory. As soon as log-cabins replaced their tents, they invited their father to join them. He tapped his rich Abolitionist friends and, after a long and arduous journey, delivered a wagon-load of rifles and sabres at his sons' new settlement at Osawatomie, close to the Missouri border. He arrived in October, 1855, just in time to take part in a revival of trouble between the Free Staters and the pro-slavery "Border Ruffians."

The first opportunity to show his mettle soon came when the pro-slavery Legislature sent a judge, bearing the highly judicial name of Sterling Cato, to enforce its laws near Osawatomie. The Brown family and a few friends attended the court and, parading afterwards in full armament, "appointed a committee of three to wait on the judge at once," as John Brown wrote to his brother. Judge Cato, after receiving the committee, prudently abandoned his court and left at once for a safer section of the Territory. Then a sheriff, attempting to arrest a Free Stater, was shot in his tent: a pro-slavery posse under a United States marshal occupied and sacked Lawrence, the headquarters of its rivals, who offered no resistance. Disgusted by their cowardice, John Brown loaded his wagon again and, accompanied by most of his clan, swooped down on the neighbouring settlement of Pottawatomie, the home of a number of pro-slavery families. The raiders broke into the cabins during the night and, taking out five men, who included a member of the Legislature, brutally murdered them and stole their horses.

John Brown always claimed that, though he morally approved of this massacre, he himself had no share in it; but the confession of one of the murderers, after John Brown's death, suggests that even this partial denial was untrue. The crime was unprovoked and unpardonable, its only conceivable justification being that John Brown feared that its victims meditated violence against himself and his faction. Even the Free Staters were shocked; John Brown dared not return home, but hid with his band in a dense forest.

A posse was sent to arrest him, but he managed to capture its commanders, who had indiscreetly gone out to parley with him under a white flag. "Had I known whom I was fighting,"

one of them afterwards remarked, "I would not have trusted to a flag of truce." John Brown exchanged his captives for two of his sons who, though innocent of any part in the massacre, had been arrested. Then, learning that his family's cabins had been burnt and a blockhouse built to prevent further excesses, he left Osawatimie.

Increasing bitterness between the two parties in the Territory gradually restored him to favour among the Free Staters, and he acquired merit during the next few months by relieving pro-slavery men of their property, especially horses, which he claimed—though without any show of proof—to have been previously stolen from Free Staters. He did not attempt to restore the horses to their hypothetical owners, but sold them to pay his own expenses. He resisted another attempt to capture him, losing one mad son in a skirmish, and, when the Federal Government at last took measures to suppress the intolerable disorders in Kansas, he retired from the Territory to bask in the praise of the Northern Abolitionists.

It would be wrong to say that his stories lost nothing in the telling, for he certainly avoided mentioning the Pottawatomie massacre and his violation of the flag of truce. Indeed, he now pursued a characteristically two-faced policy; allowing most of his backers to assume that he was collecting arms and money for the further defence of Free State principles in Kansas, he confided to a few friends that his real ambition was to prepare a raid into slave-owning Virginia and to start a negro rebellion.

This secret he revealed also to a conference of negroes and some white sympathizers which he convened in Canada in May, 1858. The conference drew up a constitution for the provisional government which was to assume authority in the South as soon as his invasion and the slave revolt should destroy the domination of the slave-owners. The constitution bears the hall-mark of John Brown's contempt for facts that he did not wish to recognize. For example, one clause stated that the provisional government did not propose to overthrow any State authority; while another declared that "our flag shall be the same that our fathers fought under in the Revolution," though few, if any, of the negroes present could claim such ancestry. He was to be the commander-in-chief of the new government.

While his great plot was hatching, John Brown found time to pay a farewell visit to Kansas, where he distinguished himself by leading a party across the Missouri border and releasing eleven slaves (and a number of horses) from captivity. A slave-owner was killed in the foray. John Brown sent the horses away—"They are Abolition horses," he explained; "I converted

them"—routed a posse that tried to arrest him, and, disregarding the posters for his arrest published by the Governor of Missouri, proudly escorted his human trophies to the Canadian border. During the journey their number was increased to twelve, the baby being christened John Brown in his honour.

He was now ready to launch "by far the most important undertaking of my whole life." In July, 1859, he arrived at Harper's Ferry, a small town on the Maryland-Virginia border at the confluence of the Potomac and Shenandoah rivers, and the site of a Federal arsenal. It was the northernmost point of the political South. Describing himself as Isaac Smith, a farmer, he rented a farm a few miles across the Maryland border, and, sending for a daughter and daughter-in-law to keep house, summoned his adherents. These consisted of four sons, a son-in-law and his brother, nine other white Abolitionists and five negroes.

The average age of his followers was only twenty-five. The oldest of them, a mulatto named Dangerfield Newby, was the son of a Scotchman who had taken him as a child to Ohio and freed him; his wife and children were still in slavery. A pathetic letter from his wife has survived, in which she wrote, "Oh, dear Dangerfield, come this fall without fail, money or no money, I want to see you so much: that is the one bright hope I have before me." It was to save her that he joined the enterprise, but the others were all simple enthusiasts without any personal interest to serve.

Through the autumn John Brown drilled his men and fashioned a large number of pikes for the slaves whom he hoped to free. Despite his insistence on secrecy, which meant incidentally that the negroes had to spend most of their time hidden in an upstairs room, some hint of his plot became known; a friend, eager to save him from his own rashness, even sent a letter of warning to the Secretary of War at Washington, but it was set aside as absurd. Nobody could believe in the possibility of an armed raid into the peaceful South.

John Brown's intolerance of criticism, his dictatorial obstinacy and, no less, the appalling perils before them, disheartened some of the conspirators during the tense months of waiting. They were further depressed by a visit of Frederick Douglass, the famous negro orator. He had first met John Brown in Massachusetts more than a dozen years before, and the latter had told him that "no political action will ever abolish the system of slavery; it will have to go out in blood." And the white man had argued, even then, that the only way to shake

the South was to make its slave-property insecure by introducing a force of Abolitionists into the Virginian mountains and arming the slaves against their masters. He was now able to show Douglass that this plan was in train: the arsenal at Harper's Ferry was to be captured, the slaves armed, and their masters brought in as hostages. "When I strike," the old fanatic told Douglass, "the bees will begin to swarm, and I shall want you to help me hive them." Douglass, who saw no possibility of success, not only refused to help John Brown but urged his negro followers to leave him before it was too late. Though they refused, they were shaken by Douglass's attitude.

Their zeal revived, however, when they learned that a slave in the neighbourhood had hanged himself in despair because his wife was to be "sold South." This incident and the rumoured murder of five other Virginian slaves by their masters made them no longer hesitate to follow John Brown. The two women were sent away from the farm at the end of September; on Sunday evening, 16th October, 1859, the old man administered to his twenty followers an oath of allegiance to his provisional government, gave them their orders, and, leaving three men behind as a rearguard, bade the others, "Get on your arms! We will proceed to the Ferry." They loaded the pikes into a wagon and set off to invade Virginia, five miles away across the river.

John Brown sent a party ahead to liberate slaves and take hostages, left three other men on guard at the bridge, and, forcing his way into the ill-guarded arsenal, dispersed his small remaining force into various parts of the building. Then he waited for the slaves to rise and overthrow their masters. "I want to free all the negroes in this State," he told the watchman at the arsenal. "If the citizens interfere with me, I must burn the town and have blood."

At first all went according to plan. Incredulous slave-owners were brought in and held captive. Among them was Colonel Washington, a great-grand-nephew of the first President, and the owner of a sword of honour given to the latter by Frederick the Great. John Brown insisted that the sword should be brought to the arsenal and—as a symbolical gesture—be handed over by its owner to one of the negro raiders. Afterwards he fastened it to his own belt and wore it throughout the fighting as a sign of his high purpose. A few local slaves too were rounded up and informed, to their unconcealed dismay, that they were to have an opportunity to take up arms for the freedom of their race. Only one of them responded half-heartedly to this call; the others waited miserably for salvation from their saviours. They had not very long to wait.

News of the raid soon spread through the sleeping town, and the Virginians, rushing out into the street, surrounded the arsenal. Both sides began to shoot. Ironically enough, the first victim was a free negro, who was killed by one of the raiders' bullets. A white Virginian also was shot during the night, but his friends dared not retaliate too vigorously on John Brown's men for fear of harming the hostages. Encouraged by his apparent success, the old fanatic assured his captives that the slaves would surely rally to his call and overthrow their masters.

By daybreak, however, it was clear that the negroes would not rise, while regular troops arrived to besiege the arsenal. The three men on the bridge were attacked; one of them, Dangerfield Newby, was shot dead and his ears were cut off by the mob as souvenirs. Part of the little garrison in the arsenal was isolated: two were killed, a third was captured, but two others, miraculously overlooked, managed to escape. The men left behind at the farm saw that the plan had failed, and they too decamped. John Brown, recognizing that his surprise had failed but still confident of final success, sent out three men, including one of his sons, under a white flag to parley for a truce. The townsmen fired on them, and all were hit. But still the besiegers hesitated to attack the engine-house in which John Brown and four surviving followers guarded their prisoners.

Another night passed. Then Colonel Robert E. Lee, not yet famous, who had been appointed to command the troops, summoned the raiders to surrender. John Brown obstinately held out for a free conduct for himself and his band across the river to Maryland, adding graciously that the disposal of the Government property seized by him could be arranged afterwards. Lee at once ordered his men to storm the building. Using a ladder as a battering-ram, they broke their way in; one was shot as he entered the doors, and his angry companions wounded John Brown and two of his men before making them prisoners.

It is a characteristically American feature of the episode that two newspaper reporters were among the first people to question the old Abolitionist, who promptly gave them a message for publication in the Press. He complained (inaccurately) that he had surrendered to the Virginians some minutes before he was wounded, and justified the raid in these words: "I want you to understand that I respect the rights of the poorest and weakest of coloured people, oppressed by the slave system, just as much as I do those of the most wealthy and powerful. That is the idea that moved me, and that alone. I expect no reward except the satisfaction of endeavouring to

do for those in distress and greatly oppressed, as I would be done by." He claimed also that he had been chosen by Providence to free the slaves, and prophesied that the negro question was not yet solved.

The Governor of Virginia, who also examined him, drew a false conclusion from the old man's statements, and decided that he was endeavouring to conceal the existence of a widespread plot against the South, of which this raid was only a preliminary. The more, therefore, John Brown proclaimed his divine mission, the more the Governor became convinced that his prisoner was an unusually sly and intelligent fellow, "a fanatic, vain and garrulous, but firm, truthful and intelligent." This misunderstanding was to cost John Brown dearly.

His wounds, though painful, were not serious. He was sent by train next morning to Charlestown, the capital of Virginia, and indicted. In reply to the judge's formal questions, he replied that he did not expect a fair trial, and had no wish to participate in a mockery of one: "I am ready for my fate." The grand jury returned a true bill on all three counts of the indictment—treason, conspiring with slaves, and murder—and two prominent Virginian lawyers were appointed to represent him. They urged him to plead insanity and to let them put forward, in support of the plea, certain facts of his family history which had been sent to them, but he indignantly repelled this suggestion as a cowardly subterfuge. Next he refused to attend the trial, on the ground of weakness; but he was carried into court, where he pleaded not guilty.

After the prosecution had told the story of the raid and called witnesses, several of whom testified to John Brown's courteous treatment of his hostages, he suddenly protested that he had no confidence in his lawyers. They were at once replaced by advocates who had arrived from the North, but this change could not help him. The most that his counsel could urge on his behalf was that his motives in seeking to rouse the slaves were honourable and unselfish—an argument which, in the circumstances, was hardly likely to appeal to a Southern jury. He was found guilty on all counts of the charge.

Asked if he had anything to say before sentence of death was passed on him, the old man made a rambling speech which Emerson, who consistently over-rated him, afterwards compared for eloquence with Lincoln's oration at Gettysburg. "I have, may it please the court," he began, "a few words to say. In the first place I deny everything but what I have all along admitted—a design on my part to free the slaves. I intended certainly to have made a clean sweep of that matter as I did

last winter, when I went into Missouri and there took slaves without the snapping of a gun on either side"—he conveniently forgot that a slave-owner had been killed—"moving them through the country and finally leaving them in Canada. I designed to have done the same thing again on a larger scale. That was all I intended; I never did intend murder or treason or the destruction of property or to excite or incite slaves to rebellion or to make insurrection." (One wonders why, if this were true, he had so often said the opposite and gone to the trouble of preparing so many pikes for the slaves he hoped to free.)

He went on to declare that, had his raid on Harper's Ferry been designed "in behalf of the rich, the powerful, the intelligent or the so-called great . . . every man in this court would have deemed it an act worthy of reward rather than punishment." The Bible, he said, taught him to remember them that are in bonds; he had tried to live up to this teaching, and was ready to die for it. Then he admitted that, technically, he had received a fair trial, but protested against the statement of one of his surviving followers that he had persuaded them against their will to join in the raid. The only part of his speech which, despite Emerson's opinion, approached eloquence, was the passage in which he said: "I am yet too young to understand that God is any respecter of persons. I believe that to have interfered as I have done, as I always freely admitted I have done, on behalf of His despised poor, I did no wrong, but right. Now if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel and unjust enactments, I say: let it be done!"

It was to be done. The judge passed sentence on 2nd November: John Brown was condemned to be publicly hanged a month later.

Petitions for mercy poured in upon the Governor of Virginia. Some of them, from the North, urged that John Brown was a madman: the insanity of an aunt and four cousins, and the evident folly of his belief that he could settle the slavery problem singlehanded were adduced as proof of his want of mental balance. But the Governor, still aggrieved at the old man's refusal to give the names of his supposed confederates in the North, insisted that John Brown was sane. Other petitioners, in the South and in pro-slavery circles in the North, feared that his execution would make him a martyr and thus create worse dissension between the two parties in the Union;

the *New York Journal of Commerce*, for example, pointed out that the killing of Joseph Smith, the Mormon leader, had not checked the growth of Mormonism, "but rather gave it a new impetus; nor would the hanging of a score of Abolitionists have any better effect." This argument was quickly justified by a speech of Henry Ward Beecher, a leader of Northern anti-slavery opinion, who entreated his audience to allow John Brown to die: "Let Virginia make him a martyr! So far he has only blundered. His soul is noble, his work miserable. But a cord and a gibbet will redeem all that, and round off Brown's failure with a heroic success." It is only fair to add that John Brown concurred in this benevolent sentiment. He wrote "Good" in the margin of a newspaper report of Beecher's speech, and said, "I am worth infinitely more to die than to live."

Nobody bothered much about his fellow-captives, all of whom were tried and sentenced to death. One of them, a negro, had vainly tried to pass himself off as a member of the little group of slaves who were forcibly brought to the arsenal. These, by the way, all returned to their masters after the raid, with the exception of one who had bored loopholes in the wall at John Brown's order and was suspected of sympathizing with his would-be liberators; he was arrested, but died in jail before he could be tried. Dangerfield Newby's widow, bereft now of her "one bright hope," was sold South with her children.

John Brown spent the last weeks of his life writing to relatives and friends, justifying his actions, denying his participation in the Pottawatomie massacre, and refusing the ministrations of Virginian clergymen.

"Do you believe in slavery?" he asked a minister who visited him in the jail.

"I do, under the present circumstances," was the reply.

"Then I don't want your prayers," said John Brown. "I don't want the prayers of any man that believes in slavery."

In a last letter to his wife he wrote, "I am waiting the hour of my public murder with great composure of mind and cheerfulness, feeling the strongest assurance that in no other possible way could I be used to so much advance the cause of God." And again, "I bless God. I never felt stronger confidence in the certain and near approach of a bright morning and a glorious day than I have felt, and do now feel, since my confinement here." And, finally, "John Brown writes to his children to abhor with undying hatred that sum of all villainies—slavery." As he was led from his cell for the last time, he handed his guards a message in his thin, spidery handwriting, with many words

underlined: "I John Brown am now quite *certain* that the crimes of this *guilty land*: *will* never be purged away; but with Blood. I had *as I now think*: *vainly* flattered myself that without *very much* bloodshed; it might be done." The picturesque anecdote, that he kissed a slave child in its mother's arms outside the prison, is a fable.

He met his death with unfaltering courage. "This is a beautiful country," he observed, when the cart, drawn by two white horses, neared the scaffold: "I never had the pleasure of seeing it before." Fifteen hundred Southern soldiers and militiamen saw him die, among them John Wilkes Booth, Lincoln's future assassin. John Brown's last words, as he stood pinioned and hooded, were: "It does not matter to me if only they would not keep me waiting so long." His body was cut down after thirty-seven minutes and delivered to his wife, who carried it back for burial to the farm at North Elba.

Does his soul go marching on? Did he deserve the canonization which the victorious North so soon afterwards conferred on him? There is perhaps more point than Oliver Wendell Holmes intended in these lines on the Civil War:

All through the conflict, up and down,
Marched Uncle Tom and Old John Brown:
One ghost, one form ideal.
And which was false and which was real,
And which was mightier of the two,
The wisest sybil never knew,
For both alike were real!

Or were both alike legends? This is no easy question to answer.

It must first be said that, as matters stood in 1859, the Harper's Ferry raid was an act of futile and indefensible bloodshed, and his execution wholly justified. As Abraham Lincoln said, when he heard that the sentence had been carried out, "Old John Brown has been executed for treason against a State. We cannot object, even though he agreed with us in thinking slavery wrong. That cannot excuse violence, bloodshed and treason. It could avail him nothing that he might think himself right." Then, in regard to his character generally, it is difficult to picture him as the hero he claimed to be. Whether he participated in, or only approved, the Pottawatomie massacre, he cannot be absolved from the guilt of that cold-blooded, unpardonable affair. His violation of the white flag, when he captured the leaders of the posse sent against him, is equally hard to reconcile with the legend of his high-minded

chivalry. Nor can his horse-thieving and his falsehoods at the trial about the purpose of the raid be squared with it.

On the other hand, I find it impossible to agree with his detractors, who assert that his Abolitionism was only a mask for his personal ambitions. It may well be that he was allured by the thought of becoming commander-in-chief of a provisional government of a liberated South, but this was only a late development of his ruling passion; all through his letters and conversations, from the earliest days, one finds in him the same hatred of slavery and the same desire to abolish it, by violence if need be. Would any man, however ambitious, however egotistical, embark on so mad a scheme as the raid on Harper's Ferry, unless—and this is surely the key to his strange, contradictory personality—he believed with all his heart that he was a divinely appointed and divinely protected instrument for the improvement of the world?

Everything he did and said, throughout his life, suggests that he suffered from this delusion. His piety, his obstinacy, his shortsightedness, his invariable self-justification in the face of continual failures, his defiance of danger, his optimism, even his crimes and his lies—all these characteristics suggest the one explanation which he steadfastly rejected, namely, that he was a victim of hereditary madness. But, if this be true, his was the sort of madness that pierces time and foreshadows history. He prophesied that slavery would never be abolished by peaceful means, but would "go out in blood." Sixteen months after his trial and execution the Civil War began—of which Lincoln truly said that all knew slavery to be "somehow its cause"—and the bodies of a million other men were laid with John Brown's to moulder in the grave.

As a result, the American negro became a free citizen. Or so, at least, the legend tells us.

THE SACCO-VANZETTI CASE

EXCEPT the Dreyfus affair, with which it has sometimes been compared, no other trial has ever roused such serious political reactions in so many parts of the world as that of Nicola Sacco and Bartolomeo Vanzetti for murder in 1927. It took place at Dedham, ten miles outside Boston, Massachusetts, but its echo was heard in cities as far distant as Moscow and Rio de Janeiro, London and Sydney, Panama and Geneva, Milan and Tokyo. American embassies and consulates were picketed, and even attacked, by furious partisans of Sacco and Vanzetti. Bombs were thrown more than once at the house of the judge who tried them, and one of the jury was exposed to a similar outrage. An attempt to blow up Wall Street was regarded in some quarters as retaliation for their conviction. Their names are still honoured to-day at Communist and Socialist demonstrations, where they are regarded as martyrs in the cause of human progress. It is certain that few of those who thus mourn them have any but the sketchiest knowledge of the incidents which preceded their trial, of the evidence brought against them, and of the incidents which occurred in the six years between their conviction and their execution. So vague is the knowledge of some of their supporters that I have heard their death laid at the door of the Italian Fascists, while in Russia I was once assured that their chief prosecutor was "Lord Chamberlain, the English Prime Minister." Even people better instructed seem to know little of the circumstances of the trial, of the appeals which followed it, and of the facts which satisfied both the original court and other tribunals that Sacco and Vanzetti were in fact guilty of the charges brought against them. Apart, too, from its supposed political significance, the case raised several other points of importance, notably the recurrent question of the value of circumstantial evidence and the standard of professional decorum required from a judge called on to preside over a sensational trial.

There were actually two trials, though it is with the second that we are now chiefly concerned. Since, however, the result of the first trial is held by some to have affected the second, it is necessary that I should describe the whole sequence of events.

We begin, then, with an attempted "hold-up" in the streets of Bridgewater, a manufacturing town some thirty miles south

of Boston, on the morning of Christmas Eve, 1919. The progress of a lorry, carrying the wages of the employees of the White Shoe Company, was suddenly obstructed by a motor-car in which sat a party of foreign-looking men. Two of these fired—one with a shotgun—at the driver of the lorry, who returned their fire; the bandits apparently deciding that the attempt had failed, boarded their car again and drove away. The lorry driver and several bystanders gave the police and detectives employed by the Company such descriptions as they could of the criminals and their car, but there is no need at this point to weigh the value of their identification of one of the men with Vanzetti. We come, instead, to a not altogether dissimilar outrage one afternoon three and a half months later, in the neighbouring town of South Braintree.

On 15th April, 1920, two employees of the Slater and Morrill Shoe Company were transferring some sixteen thousand dollars from one factory to another along Pearl Street, South Braintree. The money was enclosed in metal boxes, each guard carrying one box. They had nearly reached their destination when they were fired at by two men who had been leaning against a fence. One of the guards fell; his assailant, standing over him, fired several more shots into his body. The other guard was shot as he ran away. Both were killed. A car drove up; the murderers jumped in, taking the boxes with them, and drove rapidly away, firing at the onlookers and throwing out pieces of rubber hose studded with nails to puncture the tyres of any motor-car that might pursue them. They came to a level-crossing, which its attendant was about to close, but their shouts made him pause long enough to let them through. The trail of the car was traced for some distance, but was then lost, though its number was taken by a workman near the scene of the crime.

Two days later a Buick car was found in a wood not far away, which the police stated to be that used in both the attacks. It was known to have been stolen in the previous November, while the number plates it bore, at Bridgewater and South Braintree respectively, had also been stolen. The police had reason to suppose that an Italian named Boda, the owner of an Overland car, had been seen driving a car like the Buick, with three other Italians. The Overland, meanwhile, was left at a garage in West Bridgewater, the owners of which, Mr. and Mrs. Johnson, promised to warn the authorities whenever it was claimed by its owner. On the night of May 5, Boda and three Italian friends—including Sacco and Vanzetti—called at the garage, and Mrs. Johnson walked to a neighbour's house to telephone to the police. Her husband pointed out to Boda

that the car did not possess proper licence plates and, either because of this or because (as was alleged by the police) the men realized that Mrs. Johnson had used the telephone, the Italians left without the car, Boda and another on a motor-cycle, Sacco and Vanzetti on foot. Later that evening Sacco and Vanzetti, both armed with revolvers, were arrested in a tram-car. They were driven to the police station, charged with being in possession of firearms without a permit—to which they pleaded guilty—and asked to explain their reason for visiting West Bridgewater that night, and their whereabouts on various other dates. No official mention was made of the two outrages, but newspapers soon announced that the prisoners were suspected of participation. Boda too was questioned but not arrested—the police afterwards explaining that they had hoped he would give them useful information—and hurriedly left for Italy. The fourth man also was arrested, but his explanations satisfied the police and he was released.

What manner of men were Sacco and Vanzetti? Nicola Sacco was born in Italy on 22nd April, 1891, and was thus just twenty-nine years old at the time of his arrest. He migrated to America in 1908 and worked in various menial capacities until he acquired a certain skill in a branch of shoemaking, after which he was employed in various factories. Bartolomeo Vanzetti, nearly three years older—he was born, also in Italy, on 11th June, 1888—arrived in America two months after Sacco. He worked at many unskilled and semi-skilled trades in restaurant kitchens, as a pastry-cook, on a railway, in a zinc mill, as a gardener, in a rope factory (where he led a strike), as a brick-layer's assistant, as an ice-cutter, as a general labourer, and as a peddler of fish.

Both men were "philosophical anarchists"—that is to say, they considered all Governments of every kind to be antagonistic to the higher nature of mankind and to the creation of a nobler civilization—and, in consequence, they were pacifists. They met in 1916, but first became close friends when, in the following year, the United States entered the war and they were liable to be called up for military services. They fled to Mexico, returning to Massachusetts only after the Armistice. Sacco then went back to shoemaking and Vanzetti to fish-peddling. Vanzetti, through his activity as a strike leader, was suspect among employers in Massachusetts, but Sacco bore a good reputation.

It must be remembered that the years immediately following the war produced a state of mind in many people in America, especially in the east, which was bitterly hostile to all

"radicals," especially Communists and anarchists. A series of outrages, culminating with an epidemic of sending bombs by post in the spring of 1919, showed that this sentiment was not altogether unreasonable. Many radicals were arrested and, if of foreign nationality, deported. A number of Sacco's and Vanzetti's friends were caught in the net. Vanzetti went to New York in April, 1920, to make inquiries about them; he learned that more police raids were probable and was advised to hide his anarchist literature. We shall see that these facts were put forward by the defence in the trial to explain some of Sacco's and Vanzetti's movements at this time and also their false statements to the police after their arrest.

Among papers found by the police in Sacco's possession was an announcement of a meeting to be held the following week: "Fellow workers, you have fought all the wars. You have worked for all the capitalists. You have wandered over all the countries. Have you harvested the fruits of your labours, the price of your victories? Does the past comfort you? Does the present smile on you? Does the future promise you anything? Have you found a piece of land where you can live like a human being and die like a human being? On these questions, on this argument, and on this theme the struggle for existence, Bartolomeo Vanzetti will speak. Admission free. Freedom of discussion to all. Take the ladies with you." It may be added that Sacco had lately received news from Italy of his mother's death and was preparing to return to his native country.

While they were in custody, witnesses of both the outrages were brought in to identify them. Sacco, however, proved that he was at work on Christmas Eve and could not have been concerned in the first crime, at Bridgewater. Consequently Vanzetti alone was charged with this unsuccessful hold-up, but both of them were accused of the murders at South Braintree. The two crimes had occurred in different counties of Massachusetts—Plymouth and Norfolk—so that different grand juries were necessary to find an indictment against the prisoners. It was afterwards suggested by the defence that the prosecution deliberately arranged for the Bridgewater case to be tried first, in the hope that Vanzetti might be found guilty and thus go to his second trial with Sacco under a cloud. The prosecution, however, pointed out that the Plymouth grand jury was in session and could indict Vanzetti at once, whereas the Norfolk grand jury was not due to meet again before September. Be that as it may, Vanzetti was indicted in June for the Bridgewater crime, and his trial began at Plymouth before Judge Webster Thayer on 22nd June, 1920.

No complete transcript of the proceedings at this first trial has been preserved, and it is therefore difficult to comment on the value of the evidence produced for and against Vanzetti. Five of the State witnesses claimed to identify Vanzetti, though, as was later pointed out, the descriptions they gave of him after the crime to the police and to Pinkerton detectives employed by the Shoe Company did not always coincide or tally with his actual appearance. One of them, a newsboy, stated, in describing the gunman, "I could tell he was a foreigner, I could tell by the way he ran." He was, of course, cross-examined by the defence on this point with the usual type of questions, and he maintained that the manner in which the man ran showed that he might have been anything but a Chinaman, a Japanese, an African or an American. This statement has been pilloried by Vanzetti's supporters as ridiculous, but it does not seem completely unreasonable. Vanzetti was found, on his arrest, to be carrying shotgun cartridges similar to those fired in the hold-up and found in the abandoned Buick car.

His main defence was an alibi; a number of Italians, his acquaintances and customers, testified that he was selling them fish at the time of the hold-up. The weakness of this testimony was threefold: first, it was necessarily presented nearly six months after the crime; secondly, this class of Italian immigrants is notoriously prone to regard loyalty to each other as not less important than assisting the State in prosecuting one of their number; and thirdly, the prosecution was able to discredit some of the witnesses. True, not all of them admitted to being friends of Vanzetti's: one said quaintly that "I have not many friends; I am a friend just of myself." But others did not attempt to hide their bias in his favour, while one of them, a schoolboy, admitted that he had learned his evidence by heart. On one point, however, all were agreed: Vanzetti had always possessed the long flowing moustache with which he appeared at the trial, whereas some of the witnesses for the prosecution had described the chief bandit at Bridgewater as a man with a neatly trimmed moustache.

What is preserved of Judge Thayer's charge to the jury seems perfectly fair to the prisoner, though one sentence in it, wrenched from its context, has been put forward by Vanzetti's defenders as provocative. Speaking of the alibi, Judge Thayer said, "Because the witnesses are Italians, no inference should be drawn against them." This phrase, say Vanzetti's friends, was a veiled intimation to the jury to discredit his witnesses. They forgot, however, that the judge went on to say, "People

are supposed to be honest, to be truthful, to be innocent. You have seen them, you have heard them and looked into their faces. You have heard or seen if they have any interest, their motive. You have heard their entire story, and now it is for you to say what is the fact and take the alibi in connection with the testimony of the Commonwealth." This is good sense and good law. On this point it remains only to note that when much later the case was re-examined by Governor Fuller, the latter said, "I talked to the counsel for Vanzetti at the Plymouth trial, the jurymen, the trial witnesses, new witnesses, present counsel and Vanzetti. . . . I believe with the jury that Vanzetti was guilty and that his trial was fair. I found nothing unusual about this case except . . . that Vanzetti did not testify." Vanzetti's counsel found it necessary to explain that he had not allowed his client to give evidence because he wished to save him from cross-examination by the prosecution, for reasons which will be clear later.

The prisoner was found guilty on all counts. The preliminaries to an appeal against the conviction were filed, but in view of the result of the second and more serious trial the appeal was not pressed. It may be added that some years later, while Vanzetti awaited execution, a gangster named Silva declared that he had committed the crime at Bridgewater and that Vanzetti did not participate in it; but this story has never been accepted by any but the most extreme sympathizers with Vanzetti.

This first trial ended on 1st July, 1920; on 16th August Judge Thayer sentenced Vanzetti to imprisonment for twelve to fifteen years. On 11th September a Norfolk grand jury formally indicted Sacco and Vanzetti for the South Braintree murders; and on 31st May of the following year their trial began at Dedham, in a different courtroom but before the same judge. While no mention was made at this trial of Vanzetti's conviction in the other case, the newspapers drew attention to it, and it must have been known to most people in court. Whether or not this fact counted seriously against Vanzetti, it must be taken into account in considering the sequel.

Even before the second trial began, it was clear that the defence had the assistance of various forces who were eager, for various reasons, to aid the prisoners. The feeling against the Government's repressive attitude towards radicals, especially those of foreign nationality, made many people rally to them. A fund was subscribed, as much as fifty thousand dollars being raised before the end of the trial and more than five times as much afterwards. As leading counsel for the defence--though

nominally for Sacco only—the services were secured of Mr. Fred Moore, a Californian advocate already well known as a “labour lawyer,” who, it was felt, would be able to counteract, or at least expose, the anticipated prejudice of a New England judge and jury. He was assisted by Mr. Callahan. Vanzetti’s lawyers were not the same as those at the previous trial; he was now represented by two prominent local advocates, the brothers Jeremiah and Thomas MacAnarney. The prosecution was conducted by the District Attorney, Mr. Katzmann, and Mr. Harold P. Williams.

There was considerable delay at the outset of the trial, the defence challenging most of the five hundred citizens who had been summoned to appear as jurors. In addition to more reasonable questions, the defence wished to ask jurors whether they were employers of labour; whether they employed Trades Unionists when such were available; whether, if employees, they were Trades Unionists; and whether they were opposed to Trades Unionism. The judge refused to permit these questions, which show that Mr. Moore and his colleagues were from the outset determined to raise social and political issues whenever possible. Only seven men out of the five hundred summoned were selected, and the judge directed the sheriffs to bring in another two hundred men without delay; five more jurymen were then chosen, though the defence objected that the methods used by the sheriffs were improper and prejudicial to the prisoners. There does not appear to be any substance in this complaint; the defence lawyers, dominated by the redoubtable Mr. Moore, were obviously ready to put every kind of obstacle in the way of the prosecution and to pave the way for an appeal if the verdict went against them.

After these preliminaries, which occupied several days, and a visit by the jury to the scene of the crime, Mr. Williams opened the case for the prosecution on 7th June. He described the South Braintree shooting and the murderers’ escape, the finding of the abandoned car, the arrest of the two prisoners and their identification by various witnesses. He claimed to have direct evidence that Sacco shot Berardelli, one of the murdered men, and that Vanzetti, though nobody could prove that he had actually fired a shot, was riding in the murderers’ car, and thus as guilty in law of the murder as Sacco. Judge Thayer reminded counsel to tell the jury that the prisoners at this stage of the trial must be presumed to be innocent, that it was for the prosecution to prove its case rather than for them to prove their innocence, and that such proof must be established beyond reasonable doubt before a verdict of guilty could be returned. Mr. Williams

was afterwards criticized because he did not, in this opening statement, refer to what, in the American legal phrase, is called "consciousness of guilt," that is, to behaviour by the prisoners tending to show that they were guilty of the crime—an important link in the chain of circumstantial evidence on which his case mainly rested.

The prosecution then called its witnesses. Some of these claimed positively to identify Sacco and Vanzetti as the murderers; others were less certain. Mrs. Johnson, the wife of the garage proprietor, was positive that Sacco was one of the men who called on her on the evening of his arrest. She could not be shaken by Mr. Moore, who did his clients no good by seeking to disprove a statement of which they had afterwards to admit the truth.

An important witness was the policeman Connolly, who arrested Sacco and Vanzetti in the tram. He said that he entered the car and asked them where they came from. They replied that they had been in Bridgewater. "I said, 'What was you doing in Bridgewater?' They said, 'We went down to see a friend of mine.' I said, 'Who is your friend?' He said, 'A man by the—they call him Poppy.' 'Well,' I said, 'I want you, you are under arrest.' " Then, he stated, Vanzetti "put his hand in his hip pocket, and I says 'Keep your hands out on your lap or you will be sorry.' " At this point, Vanzetti in the dock cried, "You are a liar!"

The policeman went on, "They both wanted to know what they were arrested for. I says 'Suspicious characters.' " He added that, on the way to the police-station, Sacco put his hand under his overcoat, as if to reach for a revolver, though he had previously denied possessing one. It was discovered at the police-station that Sacco was carrying a loaded .32 Colt pistol and a number of cartridges of various makes; while Vanzetti, as well as the shotgun cartridges mentioned in the other case, had a .38 Harrington and Richardson revolver which was alleged by the prosecution, on the strength of certain repairs, to have belonged to the murdered Berardelli, to have been picked up by Sacco after the shooting, and to have been given by him to Vanzetti. When Stewart, the chief of the Bridgewater police, gave evidence, he was not allowed to mention any of his questions to the prisoners after their arrest which concerned their political views. He testified that Sacco and Vanzetti denied knowing Boda, the owner of the Overland car, or visiting the Johnson garage that evening. He recounted his conversation with Sacco about the revolver, as follows:

"You had a revolver in your pocket when arrested?"

"Yes," answered Sacco.

"Why did you carry it?"

"To protect myself. Lots of bad men."

"Why did you carry so many cartridges?"

"Well, I go to see my friend. We go into the woods and fire them."

A cap picked up on the scene of the murder was produced by the prosecution and stated to belong to Sacco, who denied owning it. Evidence was given by his employer that Sacco, who, he said, was a sober, steady worker of good reputation, had not been at work on the day of the murders. Two firearms experts were called by the prosecution; one of them said that the fatal bullet had been fired from Sacco's revolver and the other that the bullet was "consistent" with having been fired by this revolver.

Mr. Callahan now opened the case for Sacco. He stated that evidence would be called to prove an alibi for both prisoners, who also would describe what they were doing at various vital times. Sacco, he said, would tell them that, on the day of the murder, he went to the Italian consulate in Boston to arrange for a passport to return to Italy; a deposition in support of this, taken in Italy from a clerk formerly in the consul's office, would be produced. Witnesses would be called who had seen the actual murderers and would testify that they were not the prisoners. It would be shown that certain statements made by witnesses for the prosecution did not tally with what they had previously said. Moreover, the prisoners would explain why they were carrying revolvers. Mr. Jeremiah MacAnarney, on behalf of Vanzetti, said he did not think it necessary to address the jury at this stage of the trial, since Sacco's case substantially represented his client's.

Witnesses were at once called for the defence to state that, though they had seen the murderers, these were not Sacco and Vanzetti. Firearms experts duly insisted that the bullets had not been fired from Sacco's revolver. A procession of Italians put forward an alibi for the prisoners, though not always with complete success, one witness, for example, making an error in dates and seeming to testify that he worked on a succession of Sundays. The consulate clerk's deposition from Italy stated that he remembered Sacco's applying for a passport on 15th April: the incident stuck in his memory because he had noticed the date on a calendar and because the photographs brought by Sacco were too big for use.

Vanzetti began to give evidence on 5th July, the twenty-

ninth day of the trial. After a short account of his life and an enumeration of the many employments in which he had worked, he admitted that he had called at the Johnsons' garage on the night of the arrest; in reply to further questions by his counsel about his reason for wanting to use Boda's car, he stated that it was to move a supply of anarchist and similar literature to safer places. This was the first mention in the case of his and Sacco's political opinions. It is certain that the defence counsel, who had succeeded in preventing any political disclosures by the prosecution, did not open up this matter without careful consideration; they doubtless felt the need of introducing it if the case for the prosecution was to be answered.

Vanzetti then gave his version of the arrest. "The officer who arrested me on the electric car," he said, "came in the front of the car, and when he come near the chair where we sit down, 'Sacco,' he say, 'where do you come from?' And we answered, 'We come from Bridgewater.' Then he took out a revolver. He pointed to us a revolver at me—yes, sir!—and say, 'You don't move, you dirty thing.'" He denied that the policeman told him not to put his hand in his pocket. He added that, at the police-station, he was threatened with a revolver, refused a blanket to sleep in, and spat at by the police. His counsel asked him to explain why he lied to the chief of police about his movements on the night of the arrest. "Because in that time there," said Vanzetti, "there was the deportation, and the reaction was more vivid than now and more mad than now." He went on to explain that both he and Sacco knew they were liable to deportation if they were identified as men who had fled to Mexico in 1917 to escape military service; this was their reason for seeking to evade the police questions. He confessed that he had lied also about where he obtained the revolver which was found on him, in order not to incriminate his friends; actually, he said, he had bought it four years previously in Boston. His reason for carrying a revolver was that "It was a very bad time" and he armed himself in self-defence, and especially because he had to take money to Boston to buy fish.

Sacco testified after Vanzetti. Asked why he had lied to the police, he said "I know some—the most of the friends—Socialists, why they are slackers." (Sacco used this word, without any apparent recognition of its opprobrious significance, as the equivalent of the more dignified English term, "conscientious objector.") "They got literature in the house. They got papers and everything—Socialist movement. That is why I was afraid they would do the same way as in New York and in Chicago." In other words, the prisoners claimed that they wanted Boda's

car to remove anarchist literature from the houses of friends, for fear of a police raid which would get them all into trouble. The District Attorney put Sacco through the sort of cross-examination which is very telling in court, but which in cold print is somewhat irritating. Here are some of the questions:

"Did you say yesterday that you love a free country?"

"Did you love this country in the month of May, 1917?"

"Did you love this country in the last week of May, 1917?"

"Did you go to Mexico to avoid being a soldier for this country that you loved?"

"Did you love your country when you came back from Mexico?"

"Is that your idea of showing your love for America?"

"Do you think it is a cowardly thing to do what you did?"

"You love free countries, don't you?"

"Why didn't you stay down in Mexico?"

"Is your love for the United States of America commensurate with the amount of money you can get in this country per week?"

"What is the reason you came back from Mexico, if you did not love money?"

"You said you could work less hours over in Italy. Why did you not go back there?"

"Do you love work as much as you love this country?"

And much more of the same sort, which Sacco found as much difficulty in answering as any other man, innocent or guilty, would have experienced.

At one point in this very important, though outwardly rather unreal discussion, the judge intervened. He said he assumed that the defence was arguing that Sacco and Vanzetti proposed to collect the anarchist literature in order to benefit the country by removing it from circulation. "Are you going to claim," he asked, "that much of all the collection of the literature and the books was really in the interest of the United States as well as [of] these people?" Mr. MacAnarney denied this interpretation of his client's motives. "But," the judge persisted, "is it not your claim that the defendant, as a reason that he has given for going to the Johnsons' house, [says] that they wanted the automobile to prevent people from being deported and to get this literature all out of the way? Does he not claim that this was done in the interest of the United States, to prevent violation of the law by the distribution of this literature?" Once again counsel for the defence denied making any such claim for their clients.

I mention this incident because Judge Thayer's questions

were afterwards widely quoted as proof of his prejudice against Sacco and Vanzetti, the innuendo being that he spoke ironically. There is no warrant for this suggestion in the judge's words or in their context. Either he was baffled by the defence's sudden disclosure of the prisoners' political opinions, after the police had not been allowed to introduce such testimony, or he was trying to assist them in their appeal to the jury; I can find no sort of hostility to the prisoners, actual or implicit, in his questions.

Sacco addressed the jury at some length on his views about war and freedom. When the cross-examination was resumed, he found much difficulty in explaining his lies to the police about his whereabouts on the day of the murders and about the purchase of his revolver. He had told the police that he was at work that day, but he now stated in court that he went to Boston to obtain a passport. In regard to the revolver he claimed that he lied about it in the hope of escaping punishment for carrying a revolver without a permit; but it is difficult to understand what bearing on this offence the manner of his obtaining the revolver could have. In the course of his evidence he was asked to try on the cap that had been found on the scene of the outrage; he placed it on the top of his head as if it would not fit, but when he was told to try it on again and pull it lower, it seemed to fit rather better.

On the thirty-sixth day of the trial, July 14, Mr. Moore addressed the jury on behalf of Sacco. His address, which even sympathizers with the accused describe as "rather rambling," made every reasonable point for his client, but was not strengthened by such arguments as the following reference to the experts' testimony about the revolver from which the bullet had been fired: "Gentlemen, if the time has come when a microscope must be used to determine whether a human life is going to continue to function or not, and when the users of the microscope themselves can't agree, when experts called by the Commonwealth and experts called by the defence are sharply defined in their disagreements, then I take it that ordinary men such as you and I should well hesitate to take a human life."

He was followed by Mr. Jeremiah MacAnarney on behalf of Vanzetti, and by Mr. Katzmann, who closed for the prosecution. Next day Judge Thayer summed up.

Friends of the prisoners have asserted, not without reason, that the judge was by now privately convinced of their guilt; but this is very different from the further charge brought against him of seeking to prejudice the jury against them. It is

impossible for a judge who has tried a case not to have some ideas on the merits by the time it is over; if he is to have none, then judges must be abolished. My own view of his address is that Judge Thayer fairly and dispassionately set out the facts of the case and the arguments advanced by both sides. He has been accused of emphasizing Sacco's bland admission of being a "slacker" by comparing the jury, as he did at the beginning of his summing-up, with soldiers serving their country. What he said was this: "The Commonwealth of Massachusetts called upon you to render a most important service. Although you knew that such service would be arduous, painful and tiresome, yet you, like the true soldier, responded to that call in the spirit of supreme American loyalty." And there was more in the same strain which, whatever one may think of its eloquence, only fanatics could regard as prejudicial to the accused. He went on to pledge the jury to absolute fairness: "Let your eyes be blinded to every ray of sympathy or prejudice, but let them ever be willing to receive the beautiful sunshine of truth, of reason, of sound judgment; and let your ears be deaf to every sound of public opinion or public clamour, if there be any, either in favour or against these defendants." Every prisoner, he said, no matter what his nationality, class, position, education, politics or religion, was entitled to the same rights, privileges and consideration: "I therefore beseech you not to allow the fact that the defendants are Italians to influence or prejudice you in the least degree. They are entitled, under the law, to the same rights and considerations as though their ancestors came over in the *Mayflower*." These sentences too have been pilloried by Judge Thayer's critics.

The judge went on to explain the meaning and value of circumstantial evidence, as distinct from direct evidence: "Both kinds of testimony, gentlemen, may be at times irresistibly strong and at other times irresistibly weak. Therefore, each case must stand by itself. It is not the name, gentlemen, that you give to the evidence which should govern your conclusion, but rather it is the quality, the character, and the probative effect of such evidence, independent of the name ascribed to it. Direct evidence from witnesses who are not believed is exceedingly weak. Evidence of facts and circumstances from witnesses who are not believed is exceedingly weak. Direct evidence from witnesses who are believed is irresistibly strong; and evidence of facts and circumstances from witnesses who are believed, when such evidence forces the mind, as a reasonable mind, to the conclusion of guilt, is irresistibly strong. Therefore, in the eyes of the law

there is no important distinction between circumstantial evidence and any other kind of evidence. It is the degree of proof that the evidence establishes; for, no matter what the evidence may be, it is necessary that that evidence should satisfy you of the guilt of these defendants so that you cannot come to any other reasonable conclusion than that they are guilty. If such evidence, on the other hand, does not so satisfy you, it is of no consequence, gentlemen, then whether it is evidence of circumstances or evidence of eye-witnesses. So that you must see, gentlemen, the real question is whether or not from all the evidence in these cases, no matter what you may call the name of the evidence, the Commonwealth has satisfied you to a reasonable and moral certainty that these defendants committed the alleged murder. If it has, the defendants are guilty. If it has not satisfied you, then they are not guilty."

He then summarized the evidence for and against the prisoners, describing the conflict of evidence and telling the jury that it was for them, and them alone, to determine where the truth lay. In view of later attacks on Judge Thayer, I shall quote the following sentence in regard to the prisoners' alleged consciousness of guilt: "If then the defendants were only consciously guilty of being slackers, liable to be deported, fearing punishment therefore, and were not consciously guilty of the murder . . . then there is no consciousness of guilt during the time they were at the Johnsons' house, because the defendants are solely being tried for the murders and for nothing else. In addition to what I said as to the consciousness of guilt of these defendants in regard to their conduct and movements while at the Johnson house, it equally applied to all the other evidence of consciousness of guilt in these cases, for the same reason that I have given you—namely, that these defendants are being tried for the murders . . . and for nothing else." And he repeated this warning to the jury at a later stage in his summing-up.

The jury considered their verdict throughout the entire afternoon of 14th July, 1921, sending out for a microscope in order to test the alleged identification of the fatal bullet with others fired from Sacco's revolver. At half-past seven in the evening they stated that they were agreed on their verdict: they found both prisoners guilty. At this, Sacco raised his hand and cried, "*Siamo innocenti!* They kill an innocent man. They kill two innocent men." His wife's lamentations resounded through the court. In accordance with Massachusetts practice, the judge adjourned the court without passing sentence, to allow the prisoners an opportunity to appeal. The adjournment was till

1st November, three and a half months later; it was the first of a long series of delays.

It was now rather than in court that Mr. Moore, the "labour lawyer," displayed his peculiar talents, sometimes showing more zeal than propriety in his efforts to overthrow the verdict. The defence committee, reinforced by many radical auxiliaries, brought pressure of every kind on the judge, the State authorities, and the public. The case was represented as the attempt of a reactionary administration to "frame up" two of its political opponents. Judge Thayer's words were quoted as sneers and threats, and his rulings described as conscious efforts to deny justice to men whom he knew to be innocent; while the jury, the District Attorney and, of course, the witnesses for the prosecution were all held up to execration. No stick was too weak or too dirty to beat the prosecution with. When somebody placed a bomb in one of the jurors' houses, the defence ascribed it to police provocation! Sympathizers inundated the Press with appeals, libels and poems, of which last an entire volume was collected and published under the title of *America Arraigned*. All over the world meetings were organized to demand the release of the prisoners. Humanitarians abroad, including President Mazaryk, Bernard Shaw, H. G. Wells, Anatole France, Romain Rolland, John Galsworthy, Einstein, and even Dreyfus, were persuaded to add their names to petitions for a new trial; they were spoon-fed with the partisan and often hysterically false statements of the defence committee and its spokesmen.

Meanwhile efforts were made in Boston to reverse the conviction. No sooner had the jury rendered its verdict than the counsel for the defence appealed. Their first ground was that the verdict was against the weight of the evidence. Judge Thayer, having presided at the trial, had to adjudicate on this claim; he dismissed it on 24th December, 1921, five months after the end of the trial and exactly two years to the day after the outrage at Bridgewater.

He first pointed out, in handing down his decision, that nearly seven hundred men had been examined before the jury was chosen: "No jury was ever selected in a capital case with greater care, study and consideration." Dealing then with the question whether the fatal bullet had been fired from Sacco's gun, Judge Thayer pointed out that the jury had examined the bullet and formed their opinion with due regard to the statements and illustrations furnished by the experts on both sides. Next, as to whether the cap found on the scene of the crime was Sacco's, the judge said that this was a matter which the jury was competent to decide. He passed on to the prisoners' alleged

"consciousness of guilt" and, in particular, to their false statements to the police after their arrest. He recalled his charge to the jury not to be influenced by the fact that the men were aliens and radicals, and discussed Sacco's attempted alibi. He agreed that Sacco had visited the Italian consul in Boston at some time or other, but, he asked, if this visit had really taken place on the afternoon of the murder, why did Sacco not say so at once, since the visit had no relation whatever to his radical activities? "If the defendant Sacco had told the truth that he was at the Italian consul's office on the afternoon of the day of the murder, the Commonwealth claimed that no harm could have come to him because of that fact; and, if no harm could have come to him, then the jury had a right to say that the reasons given for the falsehoods told were intentionally untrue and were therefore disbelieved, and, if disbelieved, the jury had a right to say that the alibi testimony failed because he could not and did not honestly and truthfully account for his whereabouts on the afternoon of the day of the murder."

Judge Thayer pointed out that the jury, having heard the evidence and observed the demeanour of all the conflicting witnesses, must be allowed to form its own conclusions about what really happened. Finally, he described his own position in these words: "The judge is governed by laws and should obey them to the same extent as should the individual. I cannot—as I must if I disturb these verdicts—announce to the world that these twelve jurors violated the sanctity of their oaths, threw to the four winds of bias and prejudice their honour, judgment, reason and conscience, and thereby abused the solemn trust reposed in them by the law as well as by the Court." He added that, if he were mistaken in this view about the adequacy of the evidence, or if he had been guilty of any error in his conduct of the trial, the Massachusetts Supreme Court would order a new trial—in which case "nobody will welcome the correction more gladly than will I. But, until that time comes, so far as these motions are concerned, the verdicts of the jury must stand."

Already, however, another motion for a new trial had been filed before him, on the ground that the foreman of the jury, a certain Ripley, possessed a number of cartridges similar to those found in Vanzetti's revolver, and showed them to at least one other jurymen. Ripley had since died, but two of the jury admitted having seen his cartridges, though most of the others appeared to know nothing about them. This motion was not argued till October, 1923, more than two years after the end of the trial. By that time a witness was produced who declared

that Ripley, on his way to the court, said of the defendants, "Damn them, they ought to hang, anyhow." Judge Thayer dismissed the motion on the ground that it was unreasonable to suppose that the jury—at least eight of whom knew nothing of Ripley's cartridges—had been influenced one way or the other by them. In respect of the second complaint against Ripley, the judge commented that "if this motion should be arbitrarily granted, it would mean that every verdict would be unsafe if perchance one of the jurors should happen to be taken away"; he was not prepared, he said, to permit hearsay accusations to smirch "the honour, integrity and good name of twelve honourable jurors."

Another motion for a new trial was based on a statement made by an itinerant peddler who, though fired at by one of the murderers, was never called as a witness by the prosecution. He was discovered by the defence and taken to see the prisoners in jail, a year and a half after the outrage; he declared that neither of them resembled the man who had fired at him. Judge Thayer, however, in dismissing this motion also, pointed out that the peddler had only a momentary glimpse of his assailant and could not reasonably be expected to recognize him after so long a delay. Further, the judge gave his opinion that the jury's verdict "did not rest, in my judgment, on the testimony of the eye-witnesses; for the defendants, as it was, called more witnesses than the Commonwealth, who testified that neither of the defendants were in the bandit car. The evidence that convicted these defendants was circumstantial and was evidence that is known in law as 'consciousness of guilt.' This evidence, corroborated as it was by the eye-witnesses, was responsible for these verdicts of guilty." He then reviewed the evidence which chiefly related to their "consciousness of guilt"—namely, the lies they told on arrest and their failure satisfactorily to account for their movements and for their possession of the revolvers and cartridges. Both sides of the case, he said, had been "fairly and intelligently raised and ably argued by counsel before the jury. This issue is clearly one of fact, which the law placed upon the jury to determine; and I have no right to usurp their functions or disturb their verdict, unless I can feel that it is clearly my duty to do so." He added that "testimony becomes prejudicial or favourable as it is believed or disbelieved by juries"; in this case the jury evidently disbelieved the defence, and accepted the reasoning of the prosecution.

The next motion put forward by the defence concerned one of the prosecution's witnesses, named Pelser, who now declared that his testimony that Sacco was "the dead image" of one of

the murderers had been obtained from him under duress. Judge Thayer dismissed this motion on the ground that Pelser had already contradicted himself on this very point in a previous affidavit, that a direct denial to his charge of undue pressure had been filed by the prosecution, and that "to grant a new trial on this affidavit would result in taking away rights of the Commonwealth without excuse or justification."

A fifth point raised by the defence was that another State witness, Goodridge, had testified under a false name, had a criminal record, and was notoriously biassed against all Italians. Judge Thayer denied a new trial on this issue, pointing out that, at the trial, Goodridge's veracity had been formally challenged by the defence. Goodridge, moreover, had since informed the prosecution that the defence lawyers were threatening him with arrest for an old offence if he did not retract his original evidence. Commenting on this, the judge severely criticized (as he was certainly right in doing) the methods of Mr. Moore, the defence counsel.

Next, the defence claimed that another of the original witnesses for the prosecution, a Mrs. Andrews, who identified Sacco at the trial as one of the murderers, now wished to retract her testimony. But here too it appeared that the counsel for the defence had threatened to reveal incidents in her past career and had thus persuaded her to retract or, at least, alter her original statements. Judge Thayer, in dismissing this motion, censured Mr. Moore for unprofessional conduct, stating that the latter was showing "a more intense desire in this case to procure a confession of perjury from Mrs. Andrews rather than a profound desire to seek the truth."

The seventh ground for a new trial was a statement by a new firearms expert, named Hamilton, who insisted that the prosecution's expert evidence at the trial was mistaken. The judge refused to accept Hamilton's opinion or to order a new trial because of it. Finally, the defence argued that one of the State's witnesses, Proctor, had refused to declare at the trial that the bullet was fired from Sacco's revolver, but had merely stated, by pre-arrangement with the prosecution, that it was "consistent with" having been fired from it. The judge replied that, in his view, no injustice had been done to the defence by this answer by Proctor—who was now dead—since his meaning was perfectly plain.

These preliminaries having been settled to the complete discomfiture of the defence, an appeal was taken to the Supreme Judicial Court of Massachusetts in January, 1926, now nearly five years after the trial. The grounds of the appeal were

mainly points of law, since the Supreme Court's chief function was to decide whether the case had been fairly presented to the jury, though it also had power to decide that the evidence was insufficient to warrant a conviction. Five judges, headed by the Chief Justice, heard the appeal and handed down their judgment on 12th May, 1926. They decided against the defence on every point, and upheld Judge Thayer's refusals to order a new trial. One detail may be mentioned here. The defence complained that Sacco had been examined about his political views; but the Supreme Court held that Sacco, by testifying on his own behalf, put his credibility in question and could properly, therefore, be examined about his opinions and prejudices.

Two more attempts were made by the counsel for the defence to save their clients. One arose from a confession made in jail in November, 1925, by a young Portuguese gunman, who had been convicted of murder but was appealing for a new trial on legal grounds. This man, Celestino Medeiros, told Sacco that the Braintree hold-up was the work of himself and certain unnamed associates. His confession was temporarily concealed by all parties lest it should prejudice his re-trial but, when this took place in the spring of 1926 and he was again found guilty, it was made the basis of a fresh appeal for a new trial for Sacco and Vanzetti. Another motion in the appeal claimed that the prosecution had been influenced by the desire of the United States Department of Justice to secure evidence against the prisoners as anarchists liable to deportation.

Judge Thayer dismissed the appeal, rejecting the accusations of conspiracy between the Department of Justice and the Massachusetts authorities and stating that there was no reason to believe Medeiros's statement, which was in any case weakened by his apparent ignorance of many circumstances of the Braintree crime. The defence promptly appealed from this decision to the Supreme Court where, as before, they attacked Judge Thayer and suggested that there was much more evidence that Medeiros and a gang of Italian gunmen, led by one Morelli, had committed the crime than that Sacco and Vanzetti were responsible. The Supreme Court was not impressed by these arguments. It stated that the decision on the plausibility of Medeiros's confession rested in the discretion of Judge Thayer, as the judge presiding at the original trial, and that he had not misused this discretion. Further, the Supreme Court stated that Judge Thayer was amply justified in finding that Medeiros's confession fell short of establishing his guilt or in creating reasonable doubt about the guilt of Sacco and Vanzetti.

This judgment was handed down on 5th April, 1927, seven years after the murders.

The defence seemed to have come to the end of its legal resources. It had gained nothing but delay. On 9th April Judge Thayer sat to pass sentence on both prisoners, who were, as is customary, asked if they had anything to say why sentence of death should not be passed on them.

Sacco spoke first. He said, "I am not an orator. It is not very familiar with me the English language; and, as I know, as my friend has told me, my comrade Vanzetti will speak more long, so I thought to give him the chance. I never know, never heard, even read in history anything so cruel as this Court. After seven years' prosecuting they still consider us guilty. And these gentlepeople here are arrayed with us in this Court to-day. I know the sentence will be between two class, the oppressed class and the rich class, and there will be always collision between one and the other. We fraternize the people with the books, with the literature. You persecute the people, tyrannize over them and kill them. We try the education of people always. You try to put a path between us and some other nationality that hates each other. That is why I am here to-day on this bench, for having been the oppressed class. Well, you are the oppressor.

"You know it, Judge Thayer, you know all my life, you know why I have been here, and after seven years that you have been persecuting me and my poor wife, and you still to-day sentence us to death. I would like to tell all my life, but what is the use? You know all about what I say before, and my friend—that is, my comrade—will be talking, because he is more familiar with the language, and I will give him a chance. My comrade, the man kind, the kind man to all the children, you sentence him two times, in the Bridgewater case and the Dedham case, connected with me, and you know he is innocent. You forget all the population that has been with us for seven years, to sympathize and give us all their energy and all their kindness. You do not care for them. Among that peoples and the comrades and the working class there is a big legion of intellectual people which have been with us for seven years, but to not commit the iniquitous sentence, but still the Court goes ahead. And I think I thank you all, you peoples, my comrades who have been with me for seven years, with the Sacco-Vanzetti case, and I will give my friend a chance." Then he added, "I forgot one thing which my comrade remember me. As I said before, Judge Thayer know all my life, and he know

that I am never been guilty, never—not yesterday nor to-day nor for ever.”

Vanzetti's statement was much longer. He began by proclaiming his innocence of both crimes of which he had been found guilty. “Not only am I innocent of those two crimes, not only in all my life I have never stole, never killed, never spilled blood, but I have struggled all my life, since I began to reason, to eliminate crime from the earth.” He then mentioned a matter to which great prominence was afterwards given. Addressing Judge Thayer, he said, “We know that you have spoken yourself, and have spoken your hostility against us and your despicement against us, with friends of yours on the train, at the University Club of Boston, on the Golf Club of Worcester, Massachusetts. I am sure that, if the people who know all what you say against us would have the civil courage to take the stand, maybe your Honour—I am sorry to say this because you are an old man, and I have an old father—but maybe you would be beside us in good justice at this time.” These remarks referred to information given to the defence that Judge Thayer, in private conversations, had expressed his dislike of Mr. Moore and his satisfaction at the result of the trial.

Vanzetti went on to argue that, if he had been adequately defended at the first trial, he would never have been convicted, whereas his counsel, who had since gone into partnership with the then District Attorney, “has sold me for thirty golden money like Judas sold Jesus Christ.” He also argued various points of the evidence, claiming that the judge was biassed against him and his co-defendant; and he ended with the words, “This is what I say: I would not wish to a dog or to a snake, to the most low and misfortunate creature of the earth—I would not wish to any of them what I have had to suffer for things that I am not guilty of. But my conviction is that I have suffered for things that I am guilty of. I am suffering because I am a radical, and indeed I am a radical. I have suffered because I was an Italian, and indeed I am an Italian. I have suffered more for my family and for my beloved than for myself; but I am so convinced to be right that if you could execute me two times, and if I could be reborn two other times, I would live again to do what I have done already. I have finished. Thank you.”

Judge Thayer commented briefly that he had only done his duty and that not he, but the jury, had found the prisoners guilty. He then passed sentence of death on both of them, Sacco interjecting, “You know I am innocent. That is the same words I pronounced seven years ago. You condemn two

innocent men." They were to be electrocuted in three months' time, during the week beginning 10th July.

The defence committee, having failed to save them in the courts, redoubled its efforts to rouse public opinion on their behalf. Apart from more legitimate propaganda, the grossest personal attacks on Judge Thayer were broadcast. One woman had herself photographed between two coffins and a streamer bearing the judge's alleged remark to a friend, "Did you see what I did with those anarchistic bastards?" A formal appeal for clemency was also submitted to Mr. Fuller, the Governor of Massachusetts, setting out once again the main contentions of the defence; attached to it was a report by a Mrs. Rantoul, who described certain statements made to her by Judge Thayer during the trial. Governor Fuller undertook to conduct a private investigation into the case, the defence being permitted to argue before him and to nominate witnesses whom he would question. (The defence, by the way, appear to have stated that Boda, the prisoners' companion on the night of their arrest, was ready to return to Boston from Italy for the investigation if he was given a guarantee of immunity from arrest. Since this condition could not be met, Boda did not appear. It is not clear what evidence Boda wished to give, but surely, if—as has been urged—he could have cleared the prisoners, the defence was well able to produce affidavits sworn by him or at least to publish his story. This, so far as I know, has not been done.) Governor Fuller also appointed a committee to examine the case and advise him on it; the members were to be President Lowell, of Harvard University, Mr. Samuel Stratton, president of the Massachusetts Institute of Technology, and Mr. Robert Grant, an ex-judge of the Massachusetts Probate Court. The defence objected to Mr. Grant as being notoriously hostile to the prisoners, but the Governor, after interviewing him, confirmed his appointment. The defence then asked that the committee should conduct its proceedings in public, but this was refused because it would have been tantamount to granting a new trial.

The Governor and the Lowell Committee then began their separate investigations and, as these could not be concluded before the beginning of August, the execution of Sacco and Vanzetti—as also that of Medeiros—was postponed. Both prisoners began a hunger strike, by way of drawing attention to their plight; Vanzetti soon abandoned it, but Sacco had to be forcibly fed after a month's abstinence. On the evening of 3rd August, Governor Fuller announced that he and the members of the committee had reached the unanimous opinion that

the trial had been fairly conducted and that the prisoners were rightly convicted. Four days later their reports were published.

The Governor's was a short document, in which, after setting out briefly the crime for which the men were indicted and his reasons for making a personal examination into the case and appointing a committee for the same purpose, he stated that he had set himself to consider three questions:

First, was the trial fair?

Secondly, were the accused entitled to a new trial?

Thirdly, were they guilty or not guilty?

In regard to the first point, the Governor answered the defence's complaint that political prejudice had been imported into the trial by recalling that the prisoners' views had been introduced by their own counsel against Judge Thayer's advice; he added that, interrogating the eleven jurymen who remained alive, he found that they considered the judge to have presided throughout with scrupulous fairness and without giving them any indication of his own views about the guilt of the prisoners. Mr. Fuller pointed out the inevitability of Judge Thayer's arriving at a private conclusion on this matter, but insisted that there was no proof that he had ever allowed his opinion to affect his conduct of the case. In regard to the jury, the Governor said, "I find the jurors were thoroughly honest men and that they were reluctant to find these men guilty, but were forced to do so by the evidence. I can see no warrant for the assertion that the jury trial was unfair." He remarked that the Supreme Court had already examined two hundred and fifty exceptions taken by the defence during the course of the trial and had overruled them all, thus clearly establishing that the proceedings were without legal flaw.

Turning to the second point, Governor Fuller said he was satisfied that Judge Thayer acted rightly and without bias in refusing the various motions put before him for a new trial; the Supreme Court had dismissed all the defence appeals against the judge's decisions, and the Governor agreed with it that none of the motions provided an adequate reason for a new trial. He added that he too attached no weight to Medeiros's confession.

Finally, on the question of the prisoners' guilt: "As the result of my study of the record and my personal investigation of the case, including my interviews with a large number of witnesses, I believe, with the jury, that Sacco and Vanzetti were guilty and that the trial was fair."

He concluded: "This crime was committed seven years ago. For six years, through dilatory methods, one appeal after

another, every possibility for delay has been utilized, all of which lends itself to attempts to frighten and coerce witnesses, to influence changes in testimony, to multiply by the very years of time elapsed the possibilities of error and confusion. It might be said that by undertaking this investigation I have contributed to the elaborate consideration afforded these men. My answer is that there was a feeling on the part of some people that the various delays that had dragged this case through the courts for six years were evidence that a doubt existed as to the guilt of these two men. The feeling was not justified. The persistent, determined efforts of an attorney of extraordinary versatility and industry, the judge's illness, the election efforts of three District Attorneys and dilatoriness on the part of most of those concerned are principal causes of delay. The delays that have dragged this case out for six years are inexcusable. This task of review has been a laborious one, and I am proud to be associated in this public service with clear-eyed witnesses, unafraid to tell the truth, and with jurors who discharged their obligations in accordance with their convictions and their oaths. As a result of my investigation I find no sufficient justification for executive intervention. I believe with the jury that these men, Sacco and Vanzetti, were guilty, and that they had a fair trial. I furthermore believe that there was no justifiable reason for giving them a new trial."

The report of the Lowell Committee, as it was generally named, was much more elaborate; it considered in detail not only the principal points urged by the defence, but also such additional hypotheses as, for example, that the crime must, by its very nature, have been committed by professional bandits and so could not be the work of Sacco and Vanzetti. On every point the Committee decided against the defence. In regard to the argument that the prisoners' political views had been overstressed by the prosecution in order to prejudice the jury, the members of the Committee admitted that their first impression, on reading the stenographic report of the trial, had been that the prosecuting counsel was unnecessarily harsh in this portion of his cross-examination of Sacco, but, they added, recalling that Sacco's politics had been introduced by the defence to explain his lies when he was arrested, they considered that the prosecution was justified in trying to determine whether Sacco's professions of anarchism were genuine or merely assumed for the purpose of his defence. As for the suggestion that the jury was likely to be prejudiced, the Committee pointed out that seven of them were wage-earners—two machinists, a mason, a mill operative, a worker in a shoe factory, a photographer, and

a salesman—while, of the rest, one was a farmer, one a stock-keeper, two real estate dealers, and one a grocer: "an unusually intelligent and independent body of men and withal representative." Thus, in the Committee's view, the fact that the prisoners were foreigners and radicals had no effect on the jury's decision: "native Americans would have been equally certain to be convicted on the same evidence." The Committee also absolved Judge Thayer from the slightest prejudice or impropriety in his conduct of the case, though he committed "a grave breach of official decorum" in some of his comments on the case to friends, whether or not he used the actual words alleged against him. But none of these comments was known to the jury, nor did the jury observe, as the defence claimed, that the judge's "attitude and emphasis conveyed a different impression" from his spoken words on the bench.

Not the least important part of the Committee's report referred to the matter of the bullets. Conflicting testimony had been given by experts on either side; the prosecution insisted that one of the bullets had been fired through Sacco's revolver, while the defence was equally emphatic that it had not. The Committee stated that they had examined the enlarged photographs which were presented to prove, or disprove, that the marks on the bullet showed that it had been fired by Sacco, and they had decided that the prosecution's claim was the stronger. The report ended by saying that "the Committee are of opinion that Sacco was guilty beyond reasonable doubt of the murder at South Braintree," and that "we are of opinion that Vanzetti also was guilty beyond reasonable doubt."

Still the defence continued its efforts. It appealed to the Federal Courts for a new trial on the ground that, through Judge Thayer's prejudice, the trial had not been conducted in accordance with the State Constitution and the Constitution of the United States. The hearing of this appeal came automatically before Judge Thayer himself, who refused to withdraw from the bench. He pointed out that no new trial on a capital charge could be ordered, once sentence had been passed, and insisted that counsel should confine their arguments solely to the question of his jurisdiction in the matter. Having heard their views, he denied the motion for a new trial. A further petition to the Supreme Court for a writ of error, again accusing Judge Thayer of prejudice, was refused by the judge to whom it was addressed. Then an appeal was entered to the full bench of the Supreme Court, but, as there was no possibility of its being heard before the date of the execution, a writ of Habeas Corpus was sought from certain Federal Judges.

Two judges refused to issue the writ, and, on the evening of 10th August Sacco and Vanzetti were made ready for electrocution. Their trousers had already been slit and their hair cut, to facilitate the passage of the electric current through their bodies, when news came that Governor Fuller had postponed the execution for twelve days in order that the Supreme Court should give its decision. On 16th August the Supreme Court formally refused to issue a writ of error. Forlorn attempts were then made by the defence to invoke the Federal Courts, but in vain.

Even when all hope vanished, Sacco and Vanzetti continued to show the fortitude which, except for a short nervous crisis in each case, had distinguished them throughout their long agony. Indeed, the fact that they did not collapse under the dreadful strain is regarded by some as proof of their innocence not less cogent than the evidence produced by the prosecution at the trial to suggest their "consciousness of guilt." Neither of them knew much English when they were arrested, but they soon became fluent speakers and writers in it. Their prison letters, which have been published, show that both, and especially Vanzetti, possessed many admirable traits. Only a man of unusual strength of mind, for example, could have replied kindly and calmly to a more than usually tactless sympathizer who, writing to Vanzetti about some electrical treatment to her arm, said (as he quotes in his letter to her), "How sorry I am to think that this same force which healed me may be applied to kill you!" At the last moment both men wrote letters to Sacco's young son. Sacco wrote, "Your father and Bartolo fought and fell yesterday for the conquest of the joy and freedom for all the poor workers," while Vanzetti, with a more human touch, told the boy to remember that his father was "not a criminal, but one of the bravest men I ever knew." Others of Vanzetti's letters from prison, however, do not show him in so favourable a light. Thus, he said of his lawyers in the Bridgewater trial, that "they railroaded us to the electric chair, and this they did most consciously and intentionally." When the Governor began his investigation, he visited Vanzetti in his cell, and the latter wrote that Mr. Fuller was "an honest man, as I understand it, a sincere, courageous, stubborn man, but well intentioned at the bottom of it, and in a way, clever. . . . And I like to tell you that he gave me a good heartfelt handshake before he left. I may be wrong, but I don't believe that a man like that is going to burn us on a case like ours." But, a week later, when he knew that the Governor's report would be hostile, Vanzetti declared that "Governor Alvin F. Fuller is

a murderer, as Thayer, Katzmann, the State perjurers and others." And again, "Fuller and those to whom he really sticks, knows very well that an open, full investigation of the case would free us and expose to the world the unfairness, cruelty and ferocity of our bloodthirsty executors." While of Judge Thayer Vanzetti wrote, "Thayer has did his best to murder us for class hatred, for personal career and honours, to be appointed Judge of the State Supreme Court." Any man in Vanzetti's plight may be excused such outbursts, but they do not bear out the almost superhuman character which his admirers ascribe to him.

On the night of 22nd August, 1927, in a jail surrounded by machine-guns and searchlights and besieged by an excited crowd of sightseers and partisans, scores of whom were arrested, Medeiros, Sacco and Vanzetti were executed, in that order. Sacco's last words were "Long live Anarchy!" in Italian, and, in English, "Farewell, my wife and child and all my friends. Farewell, mother." Vanzetti protested his innocence to the last: "I have never committed any crime but sometimes some sin. . . . I am innocent of all crime, not only of this, but all. I am an innocent man. I wish to forgive some people for what they are now doing to me." It is understood that Judge Thayer was not included among these.

Such, then, is the history of the sensational Sacco-Vanzetti case. Its reverberations have not yet died away. Sacco and Vanzetti are perpetually invoked as martyrs to the cause of liberty, while in the autumn of 1932 Judge Thayer's house in Massachusetts was again bombed by sympathizers with the two dead men. If there is one thing in this case more certain than another, it is that Sacco and Vanzetti were in no sense martyrs to any political cause. They were not charged with any political offence; it is false to repeat that they were condemned, directly or indirectly, because they were philosophical anarchists—even philosophical anarchists who carried loaded revolvers and extra cartridges; it seems wantonly untrue to suggest that any political prejudice in judge, prosecuting counsel, witnesses or jury was responsible for their conviction. They were tried for murder and found guilty by the jury on the evidence before it; this verdict was upheld by the judge who tried the case, by the Governor who re-opened it, and by the Lowell Committee, which examined every scrap of evidence, relevant and irrelevant, that the defence could muster.

No unbiassed person, reading the stenographic transcript of the trial, and examining the reports, statements, affidavits

and arguments adduced by either side, can have good grounds for believing that any political question affected the fate of the two men. The undeniable fact that strong prejudice existed against radicals at the time of the original trial was all in favour of the defence in the later stages of the case, and certain remarks in the Committee's report show that its members gave due attention to this point. Moreover, a careful reading of the transcript shows clearly that, however indiscreet Judge Thayer may have been in private remarks to one or two friends, he never for an instant failed on the bench to show absolute impartiality. His summing-up to the jury, like his comments all through the trial and when dealing with the various appeals—many of these deliberately provocative—is a model of propriety, impartiality and sound law. The abuse which has been heaped on him both by people ignorant of the facts and, not less, by those conversant with the actual proceedings, is as disgraceful as it is unjustified.

It is clearly not for me to discuss whether Sacco and Vanzetti were justly convicted. All that can be said now on this point is that the jury, the judge, Governor Fuller, and the Lowell Committee were all without exception convinced of their guilt. These people heard the evidence; they knew the defence, and, so far as the Governor and the Committee were concerned, they also examined a large amount of testimony, favourable to the prisoners, which could not have been introduced in a court of law. Wherever there is circumstantial evidence, there must always be an element of doubt; but in this case constant sifting and re-sifting of the evidence satisfied everybody who was called on to pass judgment that the guilt of Sacco and Vanzetti was established beyond reasonable doubt.

The motive for the crime, assuming that the two men were guilty, remains obscure. It may be claimed that Vanzetti certainly, and Sacco less certainly, were not the type of men to commit murder for purposes of private gain: indeed, none of the proceeds of the Braintree crime was ever traced to them, nor could they be shown to have altered their simple way of living after it. But when we remember that similar forcible "expropriations" have long been considered a justifiable means of financing revolutionary causes—(did not both Stalin and Litvinoff assist their party's funds by organizing a murderous bank robbery in Russia in their early days as revolutionaries?)—it seems possible that the motive for the South Braintree crime may have been to provide assistance to the Italian radicals who were in danger of deportation in New York and elsewhere. Secret inquiries by the authorities, however, found no trace of

any such funds reaching appropriate quarters in New York after the outrage; but this does not prove that they did not do so or perhaps that, if the two men had not been arrested, they would not have done so.

Undoubtedly the most gruesome part of the whole business is the long delay, more than six years, between the conviction of Sacco and Vanzetti and their execution. That this was wholly due to the efforts of their supporters—both their counsel and those who, all over the world, subscribed and agitated on their behalf—does not alter its barbarity. I cannot help feeling that, however logical it may have been to execute Sacco and Vanzetti when every plea on their behalf, reasonable and unreasonable, was exhausted, justice would have been better served if their sentence had been commuted to imprisonment. Six years' waiting for execution is an ordeal which no man, innocent or guilty, should be permitted to suffer in a civilized country.

The weakness of American legal procedure as exemplified in this case is twofold: first, the opportunity for making repeated applications of a frivolous nature, and, secondly, the chance of a re-trial. Neither would be possible in England in comparable circumstances.

(NOTE.—A complete stenographic transcript of the trial, as well as of the appeal proceedings and of what exists of the report of the earlier Bridgewater trial, has been published by Messrs. Henry Holt of New York in six large volumes. It should be consulted by anybody anxious to study the details of the case. *The Sacco-Vanzetti Case*, by Osmond K. Fraenkel, is a close but partisan study of the case from the point of view of the defence. A selection of the letters written in prison by Sacco and Vanzetti has also been published. There are numerous other books about the case, but they are mostly written by unreasoning sympathizers with the convicted men and have no value.)

BENEDICT ARNOLD AND MAJOR ANDRE

IT is a fascinating, if fruitless, speculation to consider what might have happened if George III's American colonies had not won their independence in the last quarter of the eighteenth century. One may reasonably assume that, had the fighting ended differently, the United States would have grown like Canada into a free, self-governing dominion, content to share the privileges and responsibilities of partnership in the British Empire. The advantage to the world would have been enormous: all other considerations apart, the existence of so vast and powerful a commonwealth would have ruled out the possibility of the World Wars, from the effects of which every part of the earth—the United States not least—is to-day suffering. However much, then, one may sympathize with the indignation of the American colonists against George III's obstinate stupidity, it is reasonable to wish that the quarrel had been settled otherwise.

It very nearly was. If the more than dubious patriotism of three American cowboys had not ruined Benedict Arnold's plan of betraying West Point to the King's troops in September, 1780, it is probable that the revolutionary armies would have been routed; that their Commander-in-Chief, George Washington, would have been captured and gone down to history as a noble-minded but unpractical visionary; and that Arnold himself, instead of being execrated as the vilest traitor since Judas, would be honoured in the roll of British heroes, beside Marlborough and Monk, as the saviour of his country from the miseries of civil war and revolutionary disruption. It is no answer to this to argue that treachery can never be regarded as honourable: the charge of treason in a revolutionary period is always double-edged; it does not survive the success of the transaction—and the treason of Benedict Arnold came very close to success.

We must not forget that, until the hour of his disgrace, Benedict Arnold was regarded by both American and British observers as, next to the incomparable Washington, the greatest soldier thrown up by the revolution, of which he was the direct product. It is true that, before the outbreak, he saw service in his teens as a militiaman against the French, but he soon returned to civil life, celebrating his coming of age in 1762 by setting up shop as a druggist and bookseller at New Haven, in

his native State of Connecticut. This occupation, however, did not suit his vigorous nature and he turned to more adventurous pursuits, especially those which depended for their profits on evading customs officers. From Dr. Arnold, the druggist, he became Captain Arnold, the intrepid owner-navigator of smuggling vessels. His reputation as leader of a gang of similarly minded patriots made it possible, when the revolution broke out in 1775, for him to command a newly formed militia company and, forcing reluctant local authorities to provide him with equipment, to march a force of volunteers into Massachusetts and demand to be employed in some responsible capacity in the conflict. He was promptly made a colonel and sent off to help capture Ticonderoga, the key to the lake route into loyal Canada.

He took part in the storming of the fortress and, utilizing his experience as a seaman, sailed a captured boat up Lake Champlain to surprise the King's men at St. John's. These were the first offensive operations of the war against the British, and Arnold, never a modest man, expected appropriate praise from his countrymen. Instead, he received the first of many rebuffs from them, was ordered to hand over his command to another leader and, on his return to Massachusetts after much grumbling and delay, was pointedly asked to justify the huge bill for expenses which he had submitted for settlement. He now demonstrated a curious side of his character—a passion for self-justification. In proffering his resignation, he declared that it was obvious that the authorities were "dubious of my rectitude." Arnold's rectitude was always uppermost in his thoughts, especially when it had least reason to be; *qui s'excuse s'accuse* never fitted a man so well. He eventually obtained rather less than half the sum he asked, but was able to launch himself again by persuading Congress to order an advance on Canada, where, he insisted, the population was eager to throw off the British yoke.

He undertook, "given the smiles of Heaven," to wrest Montreal and Quebec from the King's troops, who, by the way, numbered fewer than a thousand men in all Canada. His plan was approved but, to his disappointment, the command of the expedition was given to another officer. George Washington, however, who already recognized Arnold's genius, helped him to be appointed leader of a flanking force which was to surprise Quebec by approaching it through the unmapped mountains and forests of Maine. After a short delay, due largely to his troops' prudent demand for a month's pay in advance, Arnold began this perilous journey in September, 1775; six weeks later,

with a third of his thousand men incapacitated from their privations, he led the survivors into Canada, where their first action was to pull down a herd of cattle and devour them raw.

The journey was in vain: Quebec had been reinforced. Undismayed, he sat down to besiege it and, on New Year's Eve, made a desperate attempt to take it by storm. He was beaten off, sustaining a leg wound, and withdrew to Montreal, where he became military governor with a rank of brigadier-general. His old acquisitive instincts coming to the surface, he entangled himself in an affair which eventually proved the first stage in his downfall. He claimed the right, as governor, to confiscate merchandise and to pay for it, at his own price, with orders on himself for future settlement. When he was forced to evacuate the town and retire southward, he took the goods with him; they were lost in the confusion of the retreat, and he referred the original owners to Congress for satisfaction of their claims. There is no doubt that, if he could have sold the goods, he would have pocketed the profits on the deal; but he did not propose to shoulder the losses. His plea that he removed the merchandise to prevent its falling into the enemy hands did not satisfy Congress, which, remembering his exaggerated claims for expenses at Ticonderoga, began to regard him with not unmerited suspicion. Even a magnificent exploit on Lake Champlain, when he fought a superior British fleet with a handful of rebel vessels—the first battle on water between the two nations—did not restore him to favour. Five other officers were promoted to be major-generals over his head. Arnold again sent in his resignation and stated that, in regard to his Montreal transactions, he was "conscious of the rectitude" of his actions.

He retired, not for long, to his old home at New Haven. A British raid brought him out at the head of an extemporized local force which he led with such brilliance that Congress promptly offered him the rank of major-general, though he would still be junior to the five recently promoted officers. He returned to the army and fought with great distinction in the first battle of Saratoga in June, 1777, being largely responsible for this decisive American victory. But he quarrelled, as usual, with his colleagues; General Gates, who was in command, did not mention him in the official despatch on the battle and met his complaints by relieving him of his post. "Conscious of my own innocence and integrity," Arnold sent a bitter protest to Congress, which disregarded it and continued to pester him for his Montreal accounts.

He further rehabilitated himself in the second battle of

Saratoga, four months later, when, although he held no definite command, he played a great part in the victory and was again wounded. Nothing could withstand such valour: Congress restored his seniority among the generals, and Washington appointed him military governor of Philadelphia, from which the English were about to retire. He entered on these new duties in June, 1778, at the age of thirty-seven.

Once again he could not resist the lure of combining public office with private profit. He had the excuse, accepted only by himself, that his efforts in the revolutionary cause had cost him his fortune and brought him no adequate financial return; and he thought himself justified both in living extravagantly and in recouping himself by commercial enterprises. Forbidding all private trade in the city, he arranged with various merchants to sell stocks of goods for their joint advantage, and engaged also in such dubious transactions as buying a share in a disputed claim for prize-money and presenting this to Congress in his official capacity. In all these matters he offended against propriety and discretion, and certainly laid himself open to prosecution. He remained, however, conscious of his rectitude, while antagonizing Congress and local opinion. A quarrel soon developed, on personal and public grounds, with the Pennsylvanian Executive Council, which brought eight charges of misconduct against him. Congress decided that, while half the charges were baseless, the rest ought to be submitted to a court-martial. The indignant Arnold promptly resigned his post. He was disgusted with the pettifogging censure of the revolutionary authorities, who apparently could not understand that his merits and, of course, his rectitude should protect him from the malice of civilians. Surely the King would not have treated him so basely as these rebel upstarts? Benedict Arnold began to meditate treason.

For some time he had been courting pretty Peggy Shippen, the most beautiful of all the belles of Philadelphia. She and her family, though their sympathies were more with the revolution than with the old régime, had never been fanatical partisans and, like so many other Philadelphians, had found it possible to remain on friendly terms with the British officers previously quartered there, among whom was an exceptionally brilliant young officer named John André. He paid her much attention during the occupation; he continued now to write to her from New York, offering his help in obtaining dress materials and other luxuries which were temporarily unprocurable in Philadelphia. It is certain that he was aware of Arnold's fury with

Congress and hoped to get into touch with him through Peggy, the more so when she and Arnold married in April, 1779.

John André was born in London, the son of a naturalized Swiss, in 1751; he was thus ten years younger than Arnold. Like the latter, he had tried his hand in commerce before becoming a soldier, and, again like Arnold, his progress in the army had been exceptionally swift. But there they parted company. Arnold was supreme in battle and worthless elsewhere; André, for all his courage, owed his advancement chiefly to his good manners and polite accomplishments—he could versify, speak foreign tongues, paint, sing, act, arrange a fête and choose a lady's dress with equal facility. Such a man was marked out for distinction as an aide-de-camp, and he very soon occupied that post on the staff of General Grey, afterwards becoming adjutant-general to the British Army and acting more or less as the private secretary of Sir Henry Clinton, the new Commander-in-Chief. In this capacity he became aware of certain letters, signed "Gustavus," which came from the American lines to his chief. Their writer claimed to be an American officer of high rank whose merit had been slighted by Congress, who had taken up arms to redress the colonists' legitimate grievances though he was opposed to independence, and who especially disliked the new alliance between the rebels and France. "Gustavus," whom both Clinton and André recognized as Benedict Arnold, offered to exchange his revolutionary commission for the King's if the sum of £20,000 was paid to him (to make up the sum of which, he said, he had been wrongly deprived by Congress) and he were promised a rank suited to his eminence.

Acting on Clinton's instructions, André wrote to "Gustavus" over the pseudonym of "John Anderson," welcoming his proposal, but beating down his financial terms to half. Further letters were exchanged, in the guise of commercial documents, with such terms as "merchandise" and "co-partnership" masking their real significance. The British were very anxious to conclude the bargain, for, apart from Arnold's reputation as a leader, his defection would enormously affect opinion among the colonists, who were suffering from the stagnation of trade due to the war, from the worthlessness of the revolutionaries' paper-money, from the miseries of their starving, ragged, discontented forces, and, not least, from the utter incompetence of Congress. There never was a time when one man's change of sides could mean so much.

If Arnold ever hesitated in his new plan, his mind was made up for him by the result of the court-martial on his alleged misdeeds at Philadelphia. He read to the court an elaborate

self-justification, prefaced by this characteristic outburst: "When one is charged with practices which his soul abhors and which conscious innocence tells him he has never committed, an honest indignation will draw from him expressions in his own favour which, on other occasions, might be ascribed to an ostentatious turn of mind." He went on to describe his own merits and loyalty, and to contrast these with the baseness and, he hinted, disloyal sentiments of his accusers. (As he was at this moment engaged in secret bargaining with the enemy over the price of his projected treason, anybody else might have felt a certain shame in so unctuously proclaiming his rectitude; but Arnold's conscience never embarrassed him.) The court acquitted him of all the charges except one, on which Washington was ordered to reprimand him. The Commander-in-Chief discharged this unpleasant duty in the mildest manner; he addressed Arnold in flattering terms and took most of the sting out of his censure by saying, "I reprimand you for having forgotten that, in proportion as you have rendered yourself formidable to your enemies, you should have been guarded and temperate in your deportment towards your fellow-citizens." But Arnold could not stomach even this friendly rebuke and persuaded himself that he had been shamefully treated.

He determined, therefore, that the manner of his passing over to the enemy should be as ruinous as possible to his old comrades. For this reason he pleaded his wounds when Washington, in a supreme gesture of confidence, offered him the post of honour as commander of the left wing of the revolutionary army. Arnold asked instead for the command of West Point, the "Gibraltar of the Hudson" and the most important advanced post in the American lines. Washington agreed, and in August, 1780, Benedict Arnold arrived at the fortress, where he was soon joined by his wife and their six-months-old son. Peggy continued to correspond with Major André on fashionable topics, while "Gustavus" exchanged letters with "John Anderson" about their projected "co-partnership," the scope of which now included the betrayal of West Point to the King's men.

At the beginning of September "Gustavus" asked the British to send a representative of suitably high rank to discuss the final arrangements for the plot. André begged Sir Henry Clinton for this opportunity to consummate a transaction which he had nursed from the beginning, and for the success of which he was promised a baronetcy and promotion to brigadier-general. In assenting, the British commander made André promise not to run any unnecessary risk by entering the

American lines. So on 10th September André sailed up the Hudson to a rendezvous between the two armies, and Arnold approached it in his barge from the other side; but a British patrol-boat fired on the American, who returned, somewhat ruffled, to West Point. The incident was explained, and attempts were made to arrange a meeting a few days later. Washington happened, in the interval, to visit West Point on a tour of inspection and, when Arnold, nervous lest some hint of the previous affair might reach his ears, thought it wise to mention that the enemy was trying to open negotiations with him on presumably personal matters, Washington strongly urged him not to be drawn into any relations with them. As soon as the Commander-in-Chief left, however, Arnold arranged to meet André on the 21st.

Arnold spent that day at the house of a friend, Joshua Smith, near the meeting-place. In the evening Smith rowed out with muffled oars to a British sloop, the *Vulture*, which had arrived with André the previous day; the latter had expected the conversation to take place on board but, learning that Arnold was still ashore, he agreed to go off in Smith's boat and meet him. The two conspirators discussed their arrangements all night in a fir grove: Arnold undertook to hand over particulars of West Point and its garrison and to join the British as soon as the fortress fell into their hands, in return for a grant of £10,000 and the rank of major-general in the King's army. Day broke and the two men rode to Smith's house, André thus inadvertently entering the American lines. While they waited breakfast, the first accident happened. An American battery fired without orders on the *Vulture*, which weighed anchor and retired some distance downstream.

After breakfast Arnold handed his guest six documents, including descriptions of the fortifications and strength of West Point, which André placed for safe keeping in the foot of his stocking. Arnold then gave him a safe-conduct, made out in the name of John Anderson, and, entrusting him to Smith's care, rode back to his headquarters. At nightfall André exchanged his outer dress for a civilian greatcoat and hat, and rode off with Smith towards the British lines. They crossed the river and slept at a farm; next morning, Smith turned back, leaving André with some twenty miles of No-Man's-Land between him and safety. The young Englishman covered half the distance when a second and decisive accident occurred: he rode into a party of three men, playing cards, who snatched up their muskets and challenged him.

There is some doubt about what passed between them, but

it is fairly clear that André mistook them for British sympathizers and declared himself one of the King's officers; when he saw that this avowal roused their patriotism or their cupidity (the nature of their emotions has been much disputed) he belatedly produced Arnold's safe-conduct. According to unsympathetic accounts, these cowboys—as such men were called who infested the territory between the two armies and pillaged both indiscriminately—seized him and, finding traces of powder in his hair, decided that he must be a person of consequence. They searched him, stole two watches and his money, and discovered the papers in his boot. Even then, André afterwards declared, he believed they would have taken him to the British lines if they had not doubted his promise to reward them. Whatever their true sentiments, they took him to an American outpost.

Next morning, Monday, 25th September, Arnold sat at a late breakfast with his wife and his staff when a despatch was brought to him from the outpost, reporting André's arrest and adding that documents found on him had been sent to Washington, who was on his way back to West Point. The traitor saw that discovery was certain. He rose from the table and ordered his horse. While it was being saddled, he went to his wife's room and told her what had happened. It is recorded that she fainted and, for at least a day, behaved like a madwoman, but the question has never been finally settled whether she had any prior knowledge of her husband's treasonable negotiations with André. Lafayette and others who knew her were convinced that she had not. It is true that her family were already suspect on account of their friendliness with the British in Philadelphia, and that she too had been in correspondence with André; but, from what is known of her temperament and from other indications, it seems most unlikely that Arnold would have entrusted her with so dangerous a secret.

Taking leave of her, he galloped down to the river and ordered his boatmen to row him to the *Vulture*, which still waited the return of the luckless André. As Washington entered Arnold's house an hour later he was handed the packet containing the documents found on André and also a letter in which the prisoner admitted his identity and sought to clear himself from the suspicion of being a spy. "It is to vindicate my name that I speak, and not to solicit security," André wrote, adding, after an account of his arrival in the *Vulture*, "Against my stipulation, my intention, and without my knowledge beforehand, I was conducted within one of your posts. . . . Thus become a prisoner, I had to concert my escape. I quitted my

uniform, was passed another way in the night without the American posts to neutral ground, and informed I was beyond all armed parties, and left to press for New York. I was taken at Tarry-Town by some volunteers. Thus, as I have had the honour to relate, was I betrayed (being Adjutant-General of the British Army) into the vile condition of an enemy in disguise within your posts." He went on to suggest that he should be exchanged for certain distinguished American prisoners in British hands.

Washington at once realized the extent of Arnold's treachery. "Whom can we trust now?" he asked Lafayette sadly. He then altered the disposition of the forces at West Point and—a characteristically generous gesture—went to Mrs. Arnold and sought to comfort her.

Very soon a letter arrived for him from Arnold, written on board the *Vulture*. It began in the writer's most unctuous style: "The heart which is conscious of its own rectitude cannot attempt to palliate a step which the world may censure as wrong. I have ever acted upon the principle of love to my country, since the commencement of the present unhappy contest between Great Britain and the Colonies. The same principle of love to my country actuates my present conduct." He then referred to his superiors' ingratitude and requested Washington to protect Mrs. Arnold from unmerited vengeance; in a postscript he absolved his staff and Smith of any foreknowledge of his intrigue with the British. But since it was difficult to believe that Smith was a blind and deaf fool, he was arrested and, like André, ordered to be examined by a military court.

A dozen distinguished officers—among them Lafayette—formed the court, under the chairmanship of Nathaniel Greene, the most devoted of Washington's subordinates. The Commander-in-Chief sent them a formal letter which set out that André "came within our lines in the night, and on an interview with Major-General Arnold, and in an assumed character; and was taken without our lines, in a disguised habit, with a pass under a feigned name, and with the enclosed papers concealed on him"; Washington asked that "after a careful examination, you will be pleased, as speedily as possible, to report the precise state of his case, together with your opinion of the light in which he ought to be considered and the punishment that ought to be inflicted." That is to say: Was André to be considered as a spy?

The first question which the court examined was whether André had been disguised as a civilian. From the facts as we

know them, it would appear that he changed his military coat and hat for civilian ones, and this seems to have satisfied the court that he was, technically, in disguise. From his own statement in his letter to Washington—"I quitted my uniform"—he evidently accepted this view.

The second question was more difficult. Had André entered the American lines "under a flag," that is to say, with a safe-conduct entitling him to come and go without molestation? We know that Arnold did in fact give him a safe-conduct, made out in the name of John Anderson: the court had to consider whether, in view of Arnold's treachery, this was valid. A letter was produced, which had been written to Washington by the senior British officer on board the *Vulture*, arguing that André landed "with a flag, at the request of General Arnold, on public business with him, and had his permit to return by land to New York. Under these circumstances Major André cannot be detained by you, without the greatest violation of flags and contrary to the custom and usage of all nations. . . . Every step Major André took was by the advice and direction of General Arnold, even that of taking a feigned name." The British Commander-in-Chief and Arnold also sent letters upholding the plea that André was protected by his fellow-conspirator's safe-conduct. On the other hand, it was clear that the pass was written by Arnold for the purpose, known both to him and to André, of consummating an act of treachery; the prosecution argued also that Washington's warning to Arnold, a few days before, not to engage in correspondence with the British, removed his authority to offer André a safe-conduct. For both these reasons it was claimed that the pass was not binding on the Americans. The court asked André if he considered himself to have been under the protection of a flag, to which he courageously replied, "Certainly not. If I had, I might have returned under it."

This answer sealed his fate. The court found that he "ought to be considered as a spy from the enemy, and that, agreeable to the law and usage of nations, it is their opinion he ought to suffer death." Sentence was to be carried out by hanging in three days' time, on 2nd October.

Strangely enough, nobody—not even André—seems to have realized that there was a flaw in Washington's charge to the court. André was not "taken within our lines"; he was captured some miles beyond the American outposts. Possibly, however, the revolutionaries claimed possession of all places except those actually in British occupation.

Informed of the court's decision, André requested

Washington's permission to write a letter to the British Commander-in-Chief, in which he begged Sir Henry Clinton "to remove from your breast any suspicion that I could imagine I was bound by Your Excellency's orders to expose myself to what has happened. The events of coming within an enemy's posts, and of changing my dress, which led me to my present situation, were contrary to my own intentions, as they were to your orders; and the circuitous route, which I took to return, was imposed (perhaps unavoidably) without alternative upon me. I am perfectly tranquil in mind, and prepared for any fate to which honest zeal for my King's service may have devoted me." He asked Clinton to care for his mother and three sisters, and expressed satisfaction with the courtesy that he was receiving from Washington and the other American officers.

Washington sent this brave letter to Clinton with a covering note in which he pointed out that "It is evident Major André was employed in the execution of measures very foreign to the objects of flags of truce, and such as they were never meant to authorize or countenance in the most distant degree; and this gentleman confessed, with the greatest candour, in the course of his examination, 'that it was impossible for him to suppose he came on shore under the sanction of a flag.'"

The British, in reply, offered to exchange any prisoner in their hands for André. Arnold, too, wrote again to his old comrades. André, he said, "came on shore in his uniform (without any disguise) which, with much reluctance, at my particular and pressing instance, he exchanged for another coat. I furnished him with a horse and saddle, and pointed out the route by which he was to return. And as commanding officer in the department, I had an undoubted right to transact all these matters; which, if wrong, Major André ought by no means to suffer for them." (The "if wrong" is a perfect Arnold touch.) The letter ended with a threat to take vengeance for André on any American officers who fell into the writer's hands.

These letters had no effect on Washington and his subordinates except to increase their sympathy with André as a man, and their determination to execute him as a spy. He, with reckless chivalry, set aside all thoughts of escape, refusing to consider an unofficial, and indeed ridiculous, suggestion that he should have himself exchanged for Arnold, and thought only of the manner in which he must die. On the eve of his execution he sent Washington a request to be shot instead of being hanged, which is too moving to be quoted except in full:

Sir,

Buoyed above the terror of death, by the consciousness of of a life devoted to honourable pursuits, and stained with no action that can give me remorse, I trust that the request I make to your Excellency at this serious period, and which is to soften my last moments, will not be rejected.

Sympathy towards a soldier will surely induce your Excellency and a military tribunal to adapt the mode of my death to the feelings of a man of honour.

Let me hope, sir, that if aught in my character impresses you with esteem towards me, if aught in my misfortunes marks me as the victim of policy and not of resentment, I shall experience the operation of those feelings in your breast by being informed that I am not to die on a gibbet.

I have the honour to be, your Excellency's most obedient and most humble servant,

John André,

Adjutant-General, British Army.

This letter went unanswered. Yet shooting was the appropriate punishment for André's offence.

At noon next day he was led out to execution. Still hoping for a soldier's death, he was momentarily taken aback at finding himself faced with a rude gallows, made of a tree resting in the forks of two others. "Must I then die in this manner?" he said, and then, "I am reconciled to my fate, but not to the mode of it." He was bidden to mount a baggage-wagon which stood beneath the gallows. The tailboard was let down; he tried to leap into the cart but, as it was unusually high, succeeded only at the second attempt. He shivered there for a second, but mastered himself and said, "It will be but a momentary pang." Asked if he had a last message to give, he replied firmly, "Nothing but to request you will witness to the world that I die like a brave man."

Of that there could be no doubt, for no man ever died more bravely. Some of the fierce hatred felt for Arnold by his former colleagues may be traced to their pity for his victim: Joshua Smith, by the way, was acquitted by the military court, but was rearrested for civil trial; he escaped in woman's dress to New York and went to England.

Benedict Arnold, having pedantically sent Washington his resignation as a revolutionary officer, set to work as a brigadier-general in the British army to enlist a force of loyalists under the title of the American Legion. In his zeal for the King's cause, he accepted without protest the reduction of his fee from

ten to six thousand pounds and took part, with more brutality than was necessary, in a few successful actions in Virginia and elsewhere before withdrawing to England with his wife. There he was greeted with favour by the King, but with coolness by most other people. Despised and embittered, he gradually sank into oblivion.

One incident of his later career must be mentioned. Thirteen years after André's trial and death Arnold happened to be in a West Indian port, engaged in private commercial business connected with privateering, when it was captured by the French. Arnold found it necessary to hide his identity and pretend to be an American civilian. The name he assumed for this purpose was—*John Anderson!* Nothing shows more clearly than this borrowing of André's pseudonym that, in relation to that ill-fated man, Benedict Arnold still remained supremely "conscious of my own innocence and integrity."

THE TRIAL OF LEOPOLD AND LOEB

MURDER has been committed for many motives. Greed, passion, jealousy, revenge—these emotions in various forms are responsible for many murders. Again, a murderer may kill in the attempt to carry out, or escape from the consequences of, some other crime. Or he may be a homicidal maniac, like Jack the Ripper; or a drunkard or an epileptic who temporarily loses control over his actions. All such murders fall into various established classes; but, until the trial of Nathan Leopold and Richard Loeb in Chicago in the summer of 1924, it is improbable that any murder was ever committed for sheer bravado. These youths kidnapped and killed an acquaintance simply, it would appear, to experience the thrill of committing a "perfect crime," which could not possibly be brought home to them; in this expectation they were signally disappointed. The case is also remarkable for the defence initiated and brilliantly sustained by Clarence Darrow, the outstanding criminal lawyer of his time in the United States.

The victim, Robert Franks, was the fourteen-year-old son of a millionaire Jewish-American manufacturer, who had laid the foundations of his fortune by money-lending in the earlier days of Chicago's prosperity. His murderers came from the same social class; both belonged to German-Jewish families (though Loeb's mother was a German Catholic by origin), living in the same wealthy quarter of Chicago. Leopold was nineteen years old, Loeb a year younger; both had attended the University of Michigan at Ann Arbor, some two hundred miles east of Chicago, and were now law students at Chicago University, living at home with their families. All three youths—the murderers and the victim—were accustomed to every sort of luxury, had access to more money than they could reasonably spend, and had no connection, or any likelihood of voluntary connection, with the criminal classes that infest other sections of the city. Both Leopold and Loeb bore good characters; the former had already launched himself on a brilliant scientific career, while Loeb, if inferior to him in intellectual capacity, possessed an unusually charming personality. It is certain that no two human beings ever carried out a more cold-blooded crime: it is equally certain that no two had less reason to become murderers.

Leopold was the youngest child of a millionaire business

man. Precocious and original, he showed exceptional talent for learning languages and for ornithology, in which science he had won distinction by his study of the habits of a rare, and hitherto almost unobserved bird, the Kirtland Warbler. Loeb, the son of a millionaire partner in a mail-order firm, was able sufficiently to impose his personality on Leopold to make the latter believe, on the strength of a half-baked study of Nietzsche, that Loeb was a superman and himself a fit associate for a superman. On these grounds the two boys considered themselves freed from adherence to any normal code of laws or ethics. By way of demonstrating their supermanly contempt for convention, they committed various petty thefts and, in the late autumn of 1923, masked and armed, broke into Loeb's old fraternity house at Ann Arbor, among their loot being a portable Underwood typewriter which was destined to cause them considerable distress later. On the way back from this robbery they seem to have doubted each other's courage and, to put this to the test, to have examined the possibility of collaborating in a perfect crime.

After a certain amount of consideration they decided to kidnap somebody whose disappearance would cause a sensation, kill him, and still demand a ransom for his return. Among possible victims they thought, in passing, of their own fathers, but they dismissed this notion because they would, as relatives, be too much exposed to police inquiries; then they discussed the parents of various acquaintances, but rejected these chiefly on the practical ground that, in the absence of the head of a household, there would be difficulty in obtaining the ransom. They decided at last to kidnap a rich boy. Their first choice—a close friend, by the way—was discarded because his father was notoriously mean. Finally they agreed to leave the victim to chance and began to prepare their plans for use in any circumstances. Leopold stayed in three hotels under the name of Ballard, receiving mail, opening a banking account and hiring a motor-car in this name—all this in order that he and Loeb might be able to use a hired car for the crime without disclosing their identity. They bought a chisel with which to knock their victim unconscious; a rope with which to strangle him, each proposing to take one end so as to share the responsibility; some cloth for covering the body; a bottle of chloroform; and a bottle of hydrochloric acid to mutilate his features. Leopold wrote on his typewriter a letter demanding ransom.

On the afternoon of 21st May, 1924, all was ready. They drove a hired car to a piece of waste land and watched a group of boys playing, hoping that one of them, named Levinson,

would leave his companions and thus be available for kidnapping. To watch him better without betraying their identity, they returned to Leopold's house for a pair of field-glasses, but when they came back the boy, fortunately for himself, had disappeared. Continuing their drive, they sighted Robert Franks, a friend of Loeb's younger brother, on his way home from the game. Loeb at once invited him into the car; Franks hesitated, but climbed in when Loeb flattered him by asking his advice about a tennis racquet. A few moments later Leopold and Loeb gagged him, hit him on the head with a chisel and laid him unconscious on the floor of the car. Before long they discovered that he was dead.

They drove round the town, almost passing their own and their victim's homes, until nightfall, and then drove to a swamp some miles from the centre of the city, where, in a desolate spot familiar to Leopold from his bird-watching, they undressed the body, mutilated it with acid and thrust it into a drain, where they supposed it would be washed away and submerged. They buried the boy's shoes and leather belt, threw away the chisel, destroyed the cloth, and burned the rest of his clothes in a furnace in the Loeb's cellar. Writing Franks's father's name and address on the envelope, the two murderers posted the ransom letter. They telephoned his house, but Mr. Franks was out searching for his son, whose failure to return had alarmed the family: among the houses that he visited was the Loeb's. Mrs. Franks, who answered the telephone, was told that a Mr. Johnson was speaking, that her son had been kidnapped for ransom, that instructions would follow, and that the police were not to be informed. Then Leopold drove an uncle and aunt home in his own car, helped Loeb to wash the hired car, which they left for the night in the Leopolds' drive, and, after a friendly chat with his father, said good-bye to Loeb and went to bed. Altogether a busy Nietzschean afternoon.

Mr. Franks disregarded the telephone warning sufficiently to communicate with the police, but asked them not to take action, except to the extent of trying to trace any other incoming call from the kidnappers, for fear of jeopardizing his son's life. The letter reached him in the morning. It ran as follows:

Dear Sir,

As you know by this time, your son has been kidnaped. Allow us to assure you that he is at present well and safe. You need fear no physical harm for him, provided you live up carefully to the following instructions and such others

as you will receive by future communications. Should you, however, disobey any of our instructions, even slightly, his death will be the penalty.

For obvious reasons make absolutely no attempt to communicate with either the police authorities or any private agency. Should you have already communicated with the police, allow them to continue their investigations, but do not mention this letter. Secure before noon to-day \$10,000. This money must be composed entirely of old bills of the following denominations: \$2,000 in fifty-dollar bills; \$8,000 in twenty-dollar bills. The money must be old. Any attempt to include new or marked bills will render the whole venture futile. The money should be placed in a large cigar-box, or, if that is impossible, in a heavy cardboard box, securely wrapped and bound in white paper. The wrapping paper should be sealed at all openings with sealing-wax. Have the money with you prepared as directed above and remain at home after 1 p.m. See that the telephone is not in use.

As a final word of warning: this is a strictly commercial proposition, and we are prepared to put our threat into execution should we have reasonable grounds to believe that you have committed one infraction of the above instructions. However, should you carefully follow out our instructions to the letter, we can assure you that your son will be safely returned to you within six hours after our receipt of the money.

Yours truly,

George Johnson.

While the distracted father was collecting the money and waiting further instructions, Leopold and Loeb met at the University and, returning together to the former's house, found bloodstains inside the hired car, which they proceeded to wash again, telling the Leopolds' chauffeur, who offered to help, that some red wine had been spilled in it. They then instructed Mr. Franks by telephone concerning the disposal of the ransom money. He was to drive to a drug-store in the city, where a letter was waiting for him. (This letter, it was afterwards discovered, told him to go at once to the railway-station and board a south-bound train. He would have found a message in the train telling him to throw out the money when the train passed a certain building; Leopold and Loeb intended to wait there in a car and pick it up.) But, before Mr. Franks had time to leave his house, the police announced that his son's body had been found in the marsh.

There was no longer any question of ransom. Leopold and Loeb returned the hired car to its owners and sat down to enjoy, with supermanly zest, the city's attempts to solve a mystery to which they alone held the key.

All the professional and amateur detectives of Chicago concentrated on trying to find the murderer or murderers, assisted—and on this occasion really assisted—by the Press. The police felt that the comparatively small amount demanded as ransom showed that the kidnappers were amateurs in crime. Typewriting experts declared that the letter to Mr. Franks had been written on a portable machine by an unskilled typist. Except for the unusual spelling of the word "kidnaped" it seemed to be composed by a person of education. The police promptly arrested three of the masters at the victim's school and endeavoured by vigorous questioning to obtain a confession from them! Wealthy parents sent their children, among them Loeb's younger brother, to the country for fear of further kidnapping. Loeb himself, as a friend of the dead boy, assisted reporters with his suggestions. But there was one reporter, a member of the staff of the *Chicago Daily News*, who was working on an inquiry of his own; he had come into possession of a pair of horn-rimmed spectacles found near the body and was visiting the principal opticians of the city in the hope of tracing its owner. Just a week after the murder he ascertained that a pair of spectacles of this type had been sold to young Leopold, who was immediately taken to a hotel by the police for questioning.

He agreed that the glasses resembled his own, which, however, he said, were at his home. A search there failing to find them, Leopold was questioned further. He admitted that he knew the marsh well from his bird-watching expeditions which, like his general respectability, could be vouched for by numerous witnesses. As for his movements on the day of the murder, he explained that he had spent the afternoon with Loeb; they had picked up a couple of girls in his car, driven them to a park and, finding that they were unwilling to accommodate their hosts, turned them out of the car and told them to walk home. Loeb was then detained by the police, and both youths were questioned without any satisfactory result. Then the State's Attorney, Mr. Crowe, was inspired to ask Leopold what kind of typewriter he owned. The boy denied that he had ever owned a portable Underwood, but the same reporter who had helped to trace the glasses traced some theses which had been typed a few weeks before at Leopold's house, clearly on the same machine as the letter to Mr. Franks. The machine

could not be found at the house because the conspirators had thrown it into a lake, from which it was afterwards recovered; but they were both now under suspicion.

The Leopolds' chauffeur was questioned. He told the police that young Leopold's car had not left the family garage on the day of the murder, and also mentioned the incident of the stains on the hired car. Confronted with this statement, Loeb broke down and confessed. When Leopold, in an adjoining room, heard that his friend had abandoned their original tale, he too made a confession. The only serious discrepancy in their stories was that each accused the other of striking Franks with the chisel.

As soon as the news of these confessions was published their parents secured the services of Clarence Darrow, the famous Chicago advocate, already the hero of numerous defences in sensational trials. He was to be assisted by Benjamin and Walter Bachrach, both criminal lawyers of much skill and experience. With the object of stopping any further confessions, these tried to discover the boys' whereabouts, but the State Attorney kept them on the move. When after two days Mr. Darrow at last found them, they had confirmed their confessions by showing how the crime had been committed and where they had disposed of the various accessories. Their case seemed hopeless: public opinion, incensed by the brutality of the murder and prejudiced against the prisoners because of their wealth and their race, demanded the death penalty. The prosecution hastened the date of the trial. Leopold and Loeb were indicted by a grand jury on 6th June, and arraigned on 11th July, when they formally pleaded not guilty. Anticipating that the defence would try to prove the prisoners insane, the State's Attorney, who was to conduct the prosecution, had them examined by several of the most distinguished alienists in Chicago, each of whom assured him that they were sane by every known legal standard. What could Mr. Darrow hope to achieve against such odds?

He acted with consummate audacity and skill. To the amazement of everybody except the few in the secret, he changed his clients' plea at the beginning of the trial from not guilty to guilty. The State's Attorney was taken aback, for usually in American courts a plea of guilty is only entered, on a capital charge, as the result of an agreement with the prosecution that, in consideration of the saving of trouble and expense, the State will not demand the death penalty but will be content with a sentence of imprisonment. In this case, however, no such agree-

ment was feasible: the prosecution neither needed nor was willing—even had outside opinion permitted it—to make any sort of concession to the defence. Mr. Darrow, of course, knew this. He was playing a much cleverer game, which needs a brief explanation.

If the defence had tried to argue that the prisoners were insane, they would automatically have had to enter a plea of not guilty (because an insane man cannot in Illinois be guilty of a crime) and to stand trial before a jury, which would have to decide whether or not they were insane. If it found that they *were* legally sane—as was sure to happen in view of the alienists' reports—it was equally certain that they would be condemned to death, because in Illinois it is the function of a jury to decide what sentence shall be passed. And no jury in Chicago would have dared to pass any other sentence in this case. Whereas, if a plea of guilty was entered, the case would be heard without a jury, sentence would be left to the judge's discretion, and it became permissible for the defence to offer evidence in mitigation of the crime. In other words, Mr. Darrow, abandoning all hope of saving his clients from conviction, saw a chance to save their lives if the case could be tried by a judge alone, and not by a jury. His strategy was masterly in its simplicity.

The trial began on 21st July, exactly two months after the date of the murder, before Judge John R. Caverly. By Illinois law the prosecution must prove its case even when the defence pleads guilty, and this the State's Attorney and his assistant, Mr. Savage, proceeded to do with ponderous precision. Mr. Darrow cross-examined little and without heat. He took exception, however, to the statement of a policeman that Leopold had said that, with his father's millions to help him and before a friendly judge, he would escape punishment. Mr. Darrow forced this witness to admit that he had not reported this remark until several weeks after it was supposed to have been uttered. The prosecution called evidence to show that Leopold and Loeb were heavy gamblers and suggested that greed was the motive for the crime.

Then Mr. Darrow began the defence, calling three alienists in the endeavour to prove that the prisoners possessed abnormal minds which, if not rendering them insane by legal standards, made them not responsible for their actions. The moment, however, that the first of these witnesses, Dr. White, a Washington psychiatrist, gave his name and qualifications, the State's Attorney objected to his giving evidence on the ground that, by pleading guilty, the defence had abandoned the insanity defence. There was, he said, no legal basis for degrees of

responsibility: either the prisoners were sane—as their plea of guilty admitted them to be—or they were insane, in which case they must revert to their plea of not guilty and be tried by a jury.

For three days this objection was debated by counsel on both sides, the judge ruling at last that it was his duty “to hear any evidence that the defence may present” in mitigation of the crime, irrespective of its nature. Mr. Darrow had won the first round.

He recalled Dr. White, and for a week the latter and two other alienists, one from Boston and the other from New York, testified to the abnormal minds of the prisoners. Some of their evidence verged on the fantastic. For example, in the case of Loeb, they set out that, prior to his birth, his mother had not been in good health, though his father’s health was good at the time; that he had been a weakly child till his tonsils were removed; that he had been dominated by his governess; that he was a glib liar as a child; that at the age of twelve he stammered, especially in the company of other stammerers; that he suffered from a repressed feeling of inferiority; that he was addicted to day-dreams, which made him picture himself as a master criminal or a sharpshooting frontiersman; that he still possessed three milk-teeth; that he had to shave only two or three times a week; that he repented the murder only because he had been found out; that, in short, his emotional reactions were not and never had been normal and that his day-dreams were primarily responsible for his share in the murder. Another piece of evidence solemnly produced by these doctors was that in jail Loeb had found himself saying at night, “As you know, Teddy,” apparently as if talking to a teddy-bear he possessed as a small child; this was a formula, the doctors explained, which permitted him to live his day-dreams without bringing them into logical contact with the ordinary world. It was further stated on his behalf that being photographed in a cowboy suit at the age of four had damaged his mental make-up.

As for Leopold, he too (it was solemnly stated) had been weakly until his tonsils were removed; he too had suffered from domination by a hysterical governess; he too was peculiarly subject to day-dreams, which exercised an over-powering influence over him; he was very conceited; he had been unlike other boys in his indifference to games, even to the extent of being bored by baseball; he was sensitive to criticism and to his unpopularity with most of his companions; he believed that social conventions were not binding on people of superior intelligence, like himself and Loeb; he was immature in judge-

ment, self-centred, lacking in any normal ethical sense and profoundly suggestible.

The prosecution promptly called its experts to rebut this evidence. They described their observation of the two youths in jail and denied that they were insane. Thus, the examination of Dr. Patrick by the State's Attorney ended with these questions and answers:

"Have you an opinion, Doctor, from the observation and examination as detailed, as to whether the defendant, Richard Loeb, was suffering from any mental disease at the time?"

"Yes."

"What is that opinion?"

"My opinion is that he showed no evidence of mental disease."

"Will you state your reasons for that opinion, Doctor?"

"The reasons for that opinion are these. Unless we assume that every man who commits a deliberate, cold-blooded, planned murder must, by that fact, be mentally diseased, there was no evidence of any mental disease in any of this communication or in any of the statements the boys made regarding it or their earlier experiences; there was nothing in the examination; there were no mental obliquities or peculiarities shown except their lack of appreciation of the enormity of the deed which they had committed."

"Now, Doctor, have you an opinion, from the observation and examination, as detailed, as to whether the defendant, Nathan Leopold, Jr., was suffering from any mental disease at that time?"

"Yes, I have an opinion."

"What is that opinion?"

"My opinion is that there was no evidence of mental disease."

"And your reasons for that opinion?"

"Well, the reasons are just as I have stated."

Dr. Church, another distinguished psychiatrist, was called by the prosecution. He ended his evidence with the declaration that Loeb was "entirely oriented; he knew who he was, and where he was, and the time of day and everything about it. His memory was extraordinarily good; his legal powers as manifested during the interview were normal, and I saw no evidence of any mental disease." In Leopold also Dr. Church saw no signs of any mental disease: "He was perfectly oriented, of good memory, of extreme intellectual reasoning capacity,

and apparently of good judgment within the range of the subject matter." The State's Attorney recited ironically the long list of items put forward by the defence alienists—the juvenile misdeeds, the "As you know, Teddy" habit, the tonsils, the day-dreams, the milk-teeth and so on—and, asking the witness to apply them to a hypothetical person, asked if they would mean that such a person was mentally diseased. Dr. Church replied that "those additional facts have very little significance except as relates to the day-dreams. Everybody has them. Everybody knows they are dreams. They have an interest in relation to character and conduct, but they do not compel conduct nor excuse it. Those additional facts would imply a slowly developing criminal character, but would not furnish the basis for an opinion that there was any mental disease in that individual." Other alienists, including Dr. Krohn, a Chicago specialist, also testified that, in their opinion, neither youth suffered from mental disease.

The expert witnesses having thus, as usual, testified in exactly opposite senses, the decisive trial of strength began. This consisted of the closing speeches by Clarence Darrow for the defence, and by Mr. Crowe, the State's Attorney, for the prosecution.

Mr. Darrow's speech, one of the most remarkable of his whole remarkable career, lasted for many hours. Neither the style nor much of the substance of his argument would have been suitable to an English court, but he was not appearing in an English court; he was trying to persuade an American judge to defy both the prosecution and public opinion by not sentencing to death two rich young prisoners who had pleaded guilty to an atrocious murder. It is doubtful if any other advocate in the world could have succeeded in such circumstances, but Mr. Darrow's speech was a masterpiece, as the following summary will show.

He began by denying that vast sums of money had been spent on the defence; on the contrary, money "has been the most serious handicap that we have met," because of the prejudice against the prisoners as the sons of millionaires. If they had been poor boys, he insisted, their plea of guilty would have been met by the prosecution with an undertaking to demand not the death sentence, but one of life imprisonment. After all, no boy under twenty-one years of age had ever been sentenced to death in Chicago on a plea of guilty; why did the prosecution demand the extreme penalty in this case? An observation on one of the prosecution's alienists followed: he was described as licking his chops over "his dastardly homicidal attempt to

kill these boys"; while attention was also drawn to the fact that one of the prosecuting counsel was named Savage. "Did you pick him for his name or his ability?" Mr. Darrow asked Mr. Crowe, and continued, "When my friend Savage is my age, or even yours"—a delicate concession to the judge—"he will read his address to this court with horror." Mr. Savage's offence was, apparently, his suggestion that the defence had pleaded guilty because it was afraid to submit the issue to a jury. Mr. Darrow admitted this. "We did plead guilty before Your Honour because we were afraid to submit our case to a jury," the reason being that a judge has "more experience, more judgment and more kindness" than a jury, who would be able to shift to each other's shoulders the responsibility of hanging these boys—"it is easy enough for a jury to divide the responsibility by twelve." Surely the judge would not condemn them to death when, out of four hundred and fifty people pleading guilty to murder in the last ten years in Chicago, only one had been sentenced to death, and he, as it happened, by the present State's Attorney, the prosecutor in this case, when he was on the bench.

The prosecution, Mr. Darrow went on, had spoken with great bitterness of this crime. Certainly it was a "most distressing and unfortunate homicide," but the prosecution had exaggerated it. "I have never yet tried a case," said Mr. Darrow, "where the State's Attorney did not say that it was the most cold-blooded, inexcusable, premeditated case that ever occurred. If it was murder, there never was such a murder. If it was robbery, there never was such a robbery. If it was a conspiracy, it was the most terrible conspiracy that ever happened since the Star Chamber passed into oblivion. If it was larceny, there never was such a larceny." And the reason for every State's Attorney's hyperbole was simply that he might afterwards be able to boast that he had been connected with a big trial.

Now a jury was notoriously impressed by such exaggerations, and even a judge might feel inclined to hang the perpetrators of "the coldest blooded murder in the history of the world," but, Mr. Darrow asked, was the crime of Leopold and Loeb—of Nathan and Richard—of "Babe" and "Dickie"—really so cold-blooded? Was it really the most dastardly act in the annals of crime? No, this was one of the least dastardly and cruel murders that Mr. Darrow had ever known. "The first thing to consider is the degree of pain to the victim," and Robert Franks had suffered very little, inexcusable though his murder was. Besides, hanging these boys would not call him back to life, for, as Mr. Darrow quoted:

The moving finger writes, and having writ,
Moves on; nor all your piety and wit
Shall lure it back to cancel half a line,
Nor all your tears wash out a word of it.

The other consideration by which to measure the cold-bloodedness of a crime was the attitude of the perpetrators. "This is a senseless, useless, purposeless, motiveless act of two boys. . . . There was not a particle of hate, there was not a grain of malice, there was no opportunity to be cruel except as death is cruel—and death is cruel." Of course, the prosecution wished to show a motive in order to aggravate the offence, and had picked on the excuse that the prisoners needed money to pay their gambling debts. But the evidence produced to show that they were heavy gamblers was trifling; neither of them could possibly need the money. Did the judge believe that "they murdered a little boy, against whom they had nothing in the world, without malice, without reason, to get five thousand dollars each? All right, all right, Your Honour; if the court believes it, if anyone believes it, I can't help it." And that was the sort of material of which the prosecution's case consisted. Why, the very motivelessness of the crime showed how mentally diseased the culprits were. So did the clumsiness of all their preparations: keeping the typewriter in Leopold's house for weeks before the crime, the unintelligent attempt to create an alibi when hiring the car, and so on. In short, the whole sad business was just the crazy scheme of a couple of immature lads.

"Now, Your Honour, you have been a boy, I have been a boy, and we have known other boys," Mr. Darrow went on. Nobody who knew boys—except Dr. Krohn, the alienist, who "is liable to say anything except to tell the truth"—would suppose that two boys in Leopold's and Loeb's position would ruin all their prospects in life by such a crime, if they were not insane. "How insane they are I care not, whether medically or legally," but "there are not physicians enough in the world to convince any thoughtful, fair-minded man that these boys are right." Were they to blame for being abnormal? "This weary old world goes on begetting, with birth and with living and with death; and all of it is blind from the beginning to the end. I do not know what it was that made these boys do this mad act, but I do know there is a reason for it. I know they did not beget themselves. I know that any one of an infinite number of causes reaching back to the beginning might be working out in these boys' minds whom you are asked to

hang in malice and in hatred and injustice, because someone in the past has sinned against them." And Mr. Darrow appositely quoted the entire five verses of the poem which describes the soliloquy of a boy in the condemned cell—"a soliloquy such as these boys might make"—beginning,

The night my father got me
His mind was not on me;
He did not plague his fancy
To muse if I should be
The son you see;

and ending

And so the game is ended,
That should not have begun.
My father and my mother
They had a likely son,
And I have none.

The whole annals of crime, he said, might be searched without finding a parallel to this mad act. Justice could not be administered in such a case except by one who knew the inmost thoughts of the prisoners, their parentage, their grandparentage, the origin of every cell in their bodies, every influence that moved them, and the civilization and society in which they had lived. "If Your Honour can do it, you are wise—and with wisdom goes mercy." Not that there was much mercy even in disappointing the prosecution and condemning these boys to imprisonment for life. "For life! Where is the human heart that would not be satisfied with that? Where is the man or woman who understands his own life and who has a particle of feeling that could ask for more? Any cry for more roots back to the hyena; it roots back to the hissing serpent; it roots back to the beast and the jungle. It is not a part of man." The only conceivable reason for sentencing these boys to death was that the people in the streets of Chicago wanted it. Out of three hundred and forty murderers in ten years who had pleaded guilty in Chicago courts, he repeated, only one, a man of forty, had been hanged! "And yet they say we come here with a preposterous plea for mercy. When did any plea for mercy become preposterous in any tribunal in all the universe?" "Brother Savage," being young and an optimist, thought that hanging these boys would abolish murder; but Mr. Darrow could assure him that it would only influence people for the worse. "What influence, let me ask you, will it have for the unborn babes still sleeping in their mother's womb? And what

influence will it have on the psychology of the fathers and mothers yet to come? Do I need to argue to Your Honour that cruelty only breeds cruelty, that hatred only causes hatred, that, if there is any way to kill evil and hatred and all that goes with it, it is not through evil and hatred and cruelty; it is through charity and love and understanding?"

Mr. Darrow turned to the alienists' evidence. Even the learned witnesses for the prosecution, he said, had testified that the boys had no emotional reaction to the horror of their crime. Dr. Krohn, of course, had put a more sinister interpretation on their state of mind; but who was Dr. Krohn but a man who notoriously ranged "up and down the land peddling perjury"? Mr. Darrow was shocked at Dr. Krohn's blood-lust: "When he testified, my mind carried me back to the time when I was a kid, which was some years ago, and we used to eat watermelons. I have seen little boys take a rind of watermelon and cover their whole faces with water, eat it, devour it, and have the time of their lives, up to their ears in watermelon. And when I heard Dr. Krohn testify in this case to take the blood of these two boys, I could see his mouth water with the joy it gave him, and he showed all the delight and pleasure of myself and my young companions when we ate watermelon." It may well be to mention at this point that Dr. Krohn was a psychologist of high reputation, and that there was no foundation for this attack on his professional and personal honour.

The advocate now sought to explain how the prisoners' abnormal mentality had developed. Nature was to blame; for, quoted Mr. Darrow, we are only

Impotent pieces in the game He plays
Upon this checkerboard of nights and days,
Hither and thither moves, and checks, and slays,
And one by one back in the closet lays.

Dickie Loeb was not to blame for his warped mind. "He was not his own father; he was not his own mother; he was not his own grandparents. . . . He did not make himself. And yet he is compelled to pay." Really, said Mr. Darrow, he was almost ashamed to have to point out such obvious things in the twentieth century! It was so clear that, throughout the crime, Dickie had acted like a child; and what was a child but the result of his heredity and his environments? And Babe Leopold too was a boy—a boy without emotions, obsessed by the philosophy of Nietzsche, from whose works Mr. Darrow now made several quotations. Nietzsche had died mad as the

result of his own doctrines; what hope was there for an impressionable youth like Babe, who accepted literally this philosophy of the superman? Blind chance had brought these two youths together, each so capable of dragging the other with himself to destruction. They were just like the rabbit and the fox who met at a fence: "If the rabbit had not started when it did, it would not have met the fox and would have lived longer. If the fox had started later or earlier, it would not have met the rabbit and its fate would have been different."

Mr. Darrow then contrasted the evidence of his set of alienists with the prosecution's, again making special reference to the abominable Dr. Krohn. He submitted that there could be no doubt from the facts before the court that the prisoners were mentally diseased. He then referred to the history of capital punishment in brutal old-time England and enlightened modern Chicago to emphasize his point that, in the latter place, a plea of guilty had, hitherto, almost invariably averted a death sentence. Moreover, only two youths under twenty-one years of age had ever been hanged there, and they had probably fallen victims to the prosecution's eloquence. These were no precedents for an enlightened judge to follow; if Loeb and Leopold were to be condemned to death, "then we are turning our faces backward toward barbarism. If Your Honour can hang a boy at eighteen, some other judge can hang him at seventeen, or sixteen or fourteen." Pausing to describe the policeman's evidence (about Leopold's alleged reference to his father's millions and a friendly judge) as a "poisoned piece of perjury with a purpose," he went on to remind the judge how the World War had cheapened human life in so many people's eyes: "There are causes, as I have said, for everything that happens in this world. War is a part of it; education is a part of it; birth is a part of it; money is a part of it. And all these conspired to compass the destruction of these two poor boys."

Coming now to his peroration, Mr. Darrow demanded justice, tempered by mercy, for the prisoners and their families. The judge, he said, stood between the past and the future, between blindness and progress, between ignorance and understanding, between hate and love. "I was reading last night of the aspiration of the old Persian poet, Omar Khayyám. It appealed to me as the highest that I can vision. I wish it was in my heart, and I wish it was in the hearts of all:

"So I be written in the Book of Love,
I do not care about that Book above.
Erase my name or write it as you will,
So I be written in the Book of Love."

Such was Clarence Darrow's famous speech for the defence of Leopold and Loeb. To analyze it is only to bring out its ingenuity and persuasiveness. Admitting that the plea of guilty had been entered to avoid a worse danger, he nevertheless claimed for his clients the privileges usually accorded to prisoners who pleaded guilty. He turned the prejudice against their wealth into a reproach against the prosecution and an excuse for their abnormality. The loathsomeness of their crime became his strongest argument on their behalf. And all the time he emphasized their insanity without running the usual risks of that defence. The extravagance of many of his passages, like the ingenuousness of others, may well be regarded as conscious or unconscious examples of his ability to put forward the appropriate appeal to his audience. As he spoke, sandwiching cogent arguments between doubtful psychology and almost farcical attacks on the prosecution's most dangerous witnesses, the horror of the murder grew dim beside his picture of the fate with which the accused youths were confronted. It was no longer Leopold and Loeb whom Judge Caverly was trying, but modern civilization, capital punishment, heredity and the ghoulish Dr. Krohn, licking his chops at the thought of sending poor little Babe and Dickie to the gallows.

One would have thought that Mr. Crowe, the State's Attorney, who now had to wind up for the prosecution, would seek to prick the brilliant bubble of Mr. Darrow's eloquence by a calm recital of the facts of the crime and the weakness of the defence. The last thing he ought to have attempted was to compete with his rival in extravagance. But this was exactly what Mr. Crowe did. He galloped verbosely after every red herring that his wily adversary had drawn across his path; he capped hyperbole with wilder hyperbole; he raised such a cloud of verbal dust in the wake of Mr. Darrow's sandstorm that, when he sat down, even the bitterest enemies of the two prisoners can hardly have doubted that he had thrown away his case. It is difficult to understand Mr. Crowe's reasoning. He had been a judge; he must have known that the sort of rhodomontade which impresses a jury will merely bore a judge. He had an almost unanswerable case, yet he went out of his way to give battle on Mr. Darrow's chosen ground. But whereas Mr. Darrow's long speech—the occasional violence of which could be excused in an advocate fighting to save his clients from death—sounded like the discursive reflections of a high-minded backwoods philosopher, a prose Walt Whitman or a lyrical Abraham Lincoln, Mr. Crowe's tirade seemed to confirm his rival's

picture of him and his associates as angry, bewildered men thirsting for the blood of two unfortunate boys.

It is true, of course, that Mr. Crowe made the obvious points against the defence. He mocked at the attempt to substitute a plea of abnormality for one of insanity, and pictured Mr. Darrow telling his doctors to "make them crazy enough so that they won't hang, but don't make them crazy enough to make it necessary to put this up to twelve men, because twelve men are not going to be fooled by your twaddle. Just make them insane enough so that it will be a mitigating circumstance that we can submit to the court." And he ridiculed some of the evidence produced for them: "Your Honour ought not to shock their ears by such a cruel reference to the laws of the State, to the penalty of death. Why, don't you know that one of them has to shave every day, and that is a bad sign; the other one only has to shave twice a week, and that is a bad sign? One is short and one is tall, and it is equally a bad sign in both of them. When they were children they played with teddy-bears. One of them has three moles in his back. One is over-developed sexually and the other not quite so good. My God, if one of them had a harelip, I suppose Darrow would want me to apologize for having them indicted!"

In contradiction of the old maxim—"No case; abuse opposing attorney"—Mr. Crowe, who had a very good case, abused Mr. Darrow. He referred to him as "the distinguished gentleman whose profession it is to protect murder in this country and concerning whose health thieves inquire before they go to commit crime"; as an atheist; and as one "whose business it is to make murder safe"; adding, with more justice than discretion, that "the real defence in this case is Clarence Darrow's dangerous philosophy of life." He dismissed the evidence of the defence alienists from New York as "all this tommy-rot by the three wise men from the East," remarking that Dr. White (whom he sometimes called, for no apparent reason, "Old Doc Yak") must be in his second childhood. As for himself, he stated solemnly that "I am a man of family; I love my children, four of them, and I love my wife, and I believe they love me," and that he believed in God. "I wonder now, Nathan," he demanded of Leopold, whose atheism had been mentioned, "whether you think there is a God or not. I wonder whether you think it is pure accident that this disciple of Nietzschean philosophy dropped his glasses or whether it was an act of divine Providence to visit upon your miserable carcasses the wrath of God in the enforcement of the laws of the State of Illinois." After these gems of eloquence, the following

reference to the prisoners seems almost bathos: "Call them babes? Call them children? Why, from the evidence in this case they are as much entitled to the sympathy and mercy of the court as a couple of rattlesnakes, flushed with venom, coiled and ready to strike. . . . Young egotistical smart alecks—that's all they are."

By way of demonstrating his righteous anger, Mr. Crowe introduced a couple of funny stories into his speech, one about a condemned murderer who assured the lawyer, "You know, there ain't nobody in this town that feels so bad about all this business as I do," and the other about a youth who was tried for murdering his father and mother and begged the judge to be lenient to a poor orphan. And though it was somewhat lost among these high lights of advocacy, Mr. Crowe reminded the court that, at this very moment, a boy of nineteen was awaiting execution in the local jail for a crime no more horrible than the prisoners'. The State's Attorney sought once again to suggest that greed was the motive for the murder. He pointed out that Leopold and Loeb had admittedly passed over several possible victims because of the difficulty of obtaining ransom for them; but I think he overlooked, deliberately or otherwise, the likelihood that the ransom represented to them rather the culmination of a perfect crime than a dominant motive.

Be this as it may, Mr. Crowe managed to destroy any impression he had made on the judge by concluding his address with a tactless reference to the fact—and it was a fact—that any sentence short of death passed on Leopold and Loeb would be regarded by the general public as proof that the court had been bribed. Judge Caverly, who had listened with commendable patience to the oratory of both sides, took exception to this remark and ordered it, despite Mr. Crowe's protests that he had not meant it offensively, to be struck from the records of the trial as "a dastardly and cowardly assault upon the integrity of this court."

The judge then announced that he would consider the arguments and pass sentence in ten days' time. On the morning of 10th September, therefore, Leopold and Loeb were again brought before him. They appeared to be faced with two alternatives: death, or a sentence of imprisonment ranging from fourteen years to life, in which latter case they might hope for release on parole after enough years had passed to allow public indignation to die down.

Judge Caverly referred briefly to the legal background of the case, adding that it was unnecessary for him again to set out the details of the crime. He agreed that a defence of

insanity would have been untenable, whereas the evidence brought forward by Mr. Darrow about the prisoners' abnormality had been both interesting and instructive: such evidence, however, applied to crime and criminals in general and, since it concerned the broad question of human responsibility and legal punishment, might deserve legislative consideration; but it could not be allowed to influence his judgment in this particular case. He announced that, chiefly because of the prisoners' youth, he did not intend to sentence them to death; instead they would be imprisoned for life on the murder charge, with his recommendation to the authorities never to admit them to parole. Then, the last surprise in this surprising trial, he went on to sentence them also to ninety-nine years' imprisonment on the charge of kidnapping, this sentence to operate even if they were paroled on the murder conviction. It meant that they could never be released without a special amnesty.

Nathan Leopold and Richard Loeb were at once removed to Joliet Jail; Judge Caverly became for a time the best abused man in Chicago, and the wily Mr. Darrow had added another triumph to his record. Nobody else, I think, could have saved the young murderers from death. His success is especially interesting because, as his career shows, Mr. Darrow is pre-eminently an advocate who depends on his ability to sway a jury; indeed he once told a friend of mine that he considered his case won or lost by the time the jury was selected.

It may be pointed out that his methods in this case would have been impossible in an English court. No degrees of murder are recognized in our barbarous law: sentence of death must be passed if the prisoner is found guilty. No bargain in such a case with the prosecution before the trial can avail him, nor can judge or jury vary the sentence, though either of them may draw attention to mitigating circumstances in the crime, and the Home Secretary may afterwards think fit to reduce the penalty.

Nor, of course, could the prosecution's objection to hearing the medical witnesses have been made in an English court. English practice is more reasonable: objection is made not to a witness but to specific questions put to him, on the theory that, until a question is put, it is impossible to tell whether he is about to give inadmissible evidence. Sometimes, however, when everybody knows the sort of questions which will be asked, it is assumed for convenience that they *have* been asked, and objection is made to them and argued. But this is a very different thing from objecting to a witness's appearance in court and, if the objection is overruled—as in the case of Dr. White—opening the way to "any evidence that the defence may present."

THE SALEM WITCHCRAFT TRIALS

HARASSED parents will probably agree that every child is a limb of Satan; still, it is doubtful if any children, in all the annals of juvenile naughtiness, have ever precipitated so much evil as the three young American girls whose mischievousness or hysteria—let the doctors decide which it was!—brought about the witchcraft trials in Salem, Massachusetts, in 1692.

The names of the little beasts were Elizabeth Parris, aged nine; her cousin, Abigail Williams, aged eleven; and Ann Putnam, aged twelve. Elizabeth and Abigail lived in the house of the former's father, the Rev. Samuel Parris, who was the principal local minister and a man of considerable unpopularity with his neighbours. He had formerly been a West Indian merchant, and this commercial training made him impatient of his congregation's reluctance to pay his dues and, probably, more than a little suspicious of their outward professions of piety. Had he lived more in harmony with his flock, he might not have been so ready to think ill of some of them, and the horrible episodes of the trials would not have happened. From the West Indies he brought with him three mulatto slaves, one of whom, a woman named Tituba, entertained his small daughter and her two friends with blood-curdling tales of ghosts and enchantments, and with palmistry and similar exhibitions of domestic magic. From her too they seem to have heard the story of the bewitching in 1688 of some Boston children named Goodwin—a story which undoubtedly started the trouble in the neighbouring township of Salem.

It appears that the Goodwin children had suddenly become afflicted with strange complaints; they became sometimes "deaf, sometimes dumb, sometimes blind, sometimes all at once"; they stood or lay in postures which suggested that their limbs were temporarily dislocated; they cried out that they had been burned or cut or beaten, and displayed the marks of the wounds; they barked like dogs, and flew across the room like geese; they insulted their parents, jeered and yawned in church, and found themselves physically unable to perform any task so disagreeable as learning the catechism, scrubbing tables, washing their hands or going early to bed. Yet it is recorded that they rarely failed to eat their meals and that, after their daily round of make-believe, they slept soundly throughout the night. Their father, Mr. Goodwin, summoned the clergy of

Boston, who held a day of prayer and fasting in the house: this cured the youngest child, but the others accused an old Irish laundress of bewitching them in revenge for an accusation of theft brought against her by the eldest girl. The Irish woman was hanged for witchcraft.

And now, four years later, Tituba's three charges at Salem began to exhibit similar symptoms, creeping under chairs and into holes, screaming, gesturing, abusing the preacher in church, and taking up dislocated poses. A doctor at once diagnosed their trouble as the effects of witchcraft. The Rev. Parris sent his little daughter away to friends, who told her to call the Devil a liar whenever he appeared to her; either through the healing effects of this formula or because she no longer had the encouragement of her companions, she became well again. But the other two girls communicated their symptoms to six more girls and young women, who in turn passed on the contagion. Fasting and prayer were as ineffective to cure them as in the case of the Goodwins in Boston; the Rev. Parris asked the children to name the person who had bewitched them, and they accused Tituba and two old women of the neighbourhood, Sarah Good and Sarah Osburn.

Tituba, doubtless influenced by a severe beating administered by the clergyman, confessed that she was a witch and had enchanted the children; her confession was borne out by the discovery of small dead patches of skin on her body which, as every pious New Englander knew, were the Devil's marks. Her confession saved her life, for, such was the curious custom of the day, self-confessed witches and wizards were not liable to the punishment reserved for those who would not admit their allegiance to Satan. The two Sarahs belonged to the latter class, too stupid or too honest to take the easy way of escape. Sarah Good was a miserable hag who lived by begging. Sarah Osburn was a more or less demented old woman. They were arrested on 29th February, 1692, and next day the leading men at Salem examined them.

Sarah Good was brought in first. "What evil spirit have you familiarity with?" the magistrates asked her.

"None," she replied.

"Have you made no contacts with the Devil?"

"No."

"Why do you hurt these children?"

"I don't hurt them. I scorn it."

"Whom do you employ then to do it?"

"I employ nobody."

"What *creature* do you employ then?"

"No creature; but I am falsely accused."

"Why did you go away muttering from Mr. Parris's house?"

"I didn't mutter, but I thanked him for what he gave my child."

"Have you made no contract with the Devil?"

"No."

The magistrates then invited the children to look at her and say if she was one of the witches who tormented them. They declared that she was, and, to substantiate this, improved on their usual antics. When, for example, the poor old woman lifted a hand, they claimed that something came out of her and beat them; if she touched her mouth, they said they were bitten. The local notables, much impressed by these proofs of her villainy, continued their examination.

"Sarah Good, do you not see now what you have done? Why do you not tell us the truth? Why do you thus torment these poor children?"

"I do not torment them."

"Whom do you employ then?"

"I employ nobody. I scorn it."

"How came they thus tormented?"

"What do I know? You bring others here, and now you charge me with it."

"Why, who was it?"

"I don't know, but it was some you brought into the meeting-house with you."

"We brought you into the meeting-house."

"But you brought in two more."

"Who was it, then, that tormented the children?"

Sarah Good, hoping to save herself from further questions, suggested that Sarah Osburn was to blame, but the magistrates, for all their satisfaction at hearing her incriminate her fellow-prisoner, did not cease to interrogate her.

"What is it you say when you go muttering away from persons' houses?"

"If I must tell, I will tell."

"Do tell us then."

"If I must tell, I will tell; it is the Commandments. I may say my Commandments, I hope."

"What Commandment is it?"

"If I must tell you I will tell; it is a psalm," and, at their command, she mumbled some part of a psalm. They listened attentively in the expectation that she would misquote the

scriptures—another certain sign of a witch. Then they asked, "Whom do you serve?"

"I serve God," said the old woman.

"What God do you serve?" was the next question, because witches were known to describe Satan as their God.

"The God that made heaven and earth," she replied, but it was noticed that she hesitated before saying the word "God." A contemporary account assures us that "her answers were in a very wicked, spiteful manner, reflecting against the authority with base and abusive words," which sounds likely enough. Her husband, whose neglect had driven her to begging, assured the magistrates that, if she was not already a witch, he was sure she would soon become one, for she behaved very badly towards him. She was taken back to prison; her five-year-old daughter was taken there also, the victims insisting that she had caused certain small bites on their arms. The humane magistrates visited the child and obtained a confession from her that her mother had given her a serpent, presumably as a familiar spirit. A mark the size of a flea-bite on the infant's hand was assumed to be the place where the serpent sucked her blood for its nourishment.

Sarah Osburn was examined next. She, like Sarah Good, denied being a witch and, when she was told that the other old woman accused her of being the cause of the children's sufferings, replied, "I do not know if the Devil goes about in my likeness to do any hurt." She clearly shared her torturers' belief that Satan, eager to harm the young people of Salem, was able to disguise himself with the outward appearance of local residents. She was sent back to jail, where she died in chains two months later.

Then Tituba was questioned.

"Tituba, what evil spirit have you familiarity with?"

"None."

"Why do you hurt these children?"

"I don't hurt them."

"Who is it then?"

"The Devil, for aught I know."

"Did you never see the Devil?"

"The Devil came to me and bid me serve him."

"Whom have you seen?"

"Four women sometime hurt the children."

"Who were they?"

"Goody Osburn and Sarah Good; and I don't know who the others were. Sarah Good and Osburn would have had me

hurt them, but I wouldn't." She then mentioned seeing a group of witches and a tall man, presumably Satan himself.

"When did you see them?"

"Last night at Boston."

"What did they say to you?"

"They said, 'Hurt the children.' "

"And did you hurt them?"

"No, there is four women and one man, they hurt the children and then they lay all upon me; and they tell me, if I won't hurt the children, they will hurt me."

"But did you not hurt them?"

"Yes, but I will hurt them no more."

"Are you not sorry that you did hurt them?"

"Yes."

"And why, then, do you hurt them?"

"They say, 'Hurt the children, or we will do worse to you.' "

"What have you seen?"

"A man come to me and say, 'Serve.' "

"What service?"

" 'Hurt the children.' And last night there was an appearance that said 'Kill the children.' And if I would not go on hurting the children, they would do worse to me."

"What is this appearance you see?"

"Sometimes it is like a hog, and sometimes like a great dog." She added that she had seen it four times.

"What did it say to you?"

"The black dog said, 'Serve me'; but I said, 'I am afraid.' He said if I didn't, he would do worse to me."

"What did you say to it?"

" 'I will serve you no longer.' Then he said he would hurt me; and then he looks like a man, and threatens to hurt me. He had a yellow bird always with him. And he told me he had more pretty things that he would give me if I would serve him."

"What were these pretty things?"

"He didn't show me them."

"What else have you seen?"

"Two cats; a red cat and a black cat."

"What did they say to you?"

"They said, 'Serve me.' "

"When did you see them?"

"Last night; and they said, 'Serve me,' but I said I would not."

"What service?"

"They said, 'Hurt the children.' "

"Did you not pinch Elizabeth Hubbard this morning?"

"The man brought her to me and made me pinch her."

"Why did you go to Thomas Putnam's last night and hurt his child?"

"They pull and haul me and make me go."

"And what would they have you do?"

"Kill her with a knife." (This was important for, as Tituba well knew, Ann Putnam had particularly complained of being threatened with a knife.)

"How did you go?"

"We ride upon sticks and are there presently."

"Did you go through the trees or over them?"

"We see nothing, but are there presently."

"Why did you not tell your master?"

"I was afraid; they said they would cut off my head if I told."

"Would you not have hurt others if you could?"

"They said they would have hurt others, but they could not."

"What attendants hath Sarah Good?"

"A yellow bird, and she would have given me one."

"What meat would she give it?"

"It did suck her between her fingers."

"Did you not hurt Mr. Curran's child?"

"Goody Good and Goody Osburn told that they did hurt Mr. Curran's child, and would have had me hurt him too; but I didn't."

"What hath Sarah Osburn?"

"Yesterday she had a thing like a woman, with two legs and wings." (Curiously enough Abigail Williams had told her uncle, the Rev. Parris, that she saw such a creature and that it was suddenly transformed into the shape of Sarah Osburn.)

"What else have you seen with Osburn?" the magistrates asked.

"Another thing, hairy. It goes upright like a man; it hath only two legs."

"Did you not see Sarah Good set upon Elizabeth Hubbard last Saturday?"

"I did see her set a wolf upon her to afflict her," replied Tituba, thus confirming one of Elizabeth Hubbard's ravings.

The magistrates asked her what clothes the tall man from Boston wore. "He goes in black clothes; a tall man with white hair, I think."

"How doth the woman go?"

"In a white hood and a black hood with a top-knot."

"Do you see who it is who torments these children now?"

"Yes, it is Goody Good; she hurts them in her own shape."

"Who is it hurts them now?"

"I am blind now; I can't see."

There were soon new prisoners to accuse. The afflicted children and one of their mothers, who had caught the contagion, accused two more local women, Martha Corey and Rebecca Nurse. The former had made herself conspicuous by her sceptical attitude towards the earlier proceedings: not only had she scoffed at the supposed guilt of Tituba and the two Sarahs, but she hid her husband's saddle to stop him from attending a meeting to smell out witches. Rebecca Nurse was a woman of seventy who, occupying a farm in the middle of certain disputed boundaries, was embroiled in disputes with her neighbours; her arrest may well have been due to this cause. A further arrest occurred a week later, when the Rev. Parris took as his text in church, "Have not I chosen you twelve, and one of you is a devil?" (John vi, 70); one of his congregation, Sarah Cloyse, regarded this as a shaft against her sister, Rebecca Nurse, and left the church. She was promptly apprehended. Another woman of good reputation, Elizabeth Proctor, was arrested and confronted with her alleged victims, who accused her of the usual crimes. "Dear child, it is not so," she answered the chief of them, adding, "There is another judgment, dear child." She was committed to prison and, when her husband indignantly protested, he too was arrested.

Sarah Cloyse made a very bad impression on the magistrates by accusing Tituba's husband of lying. As one of the little girls testified against her, Sarah fell down in a faint, at which the crowd cried that her spirit had gone to the jail to visit her sister. When she came to, she vigorously denied having bewitched the children.

"Who did, then?" asked the magistrates.

"I don't know. How should I know?" she retorted.

The children declared that they had seen a yellow bird in her hand, which they took to be her familiar spirit. She answered that she had no familiar spirit, and that she was a "gospel woman." According to the contemporary record, the bystanders commented, "Ah, she is a gospel witch." When she sensibly insisted that her accusers were poor, distracted children, the clergyman grimly pointed out that she was alone in holding this unorthodox and even impious opinion. Then the hysterical girls went through their usual performance and she was sent back to jail.

Her sister, Rebecca Nurse, was then questioned. One of the magistrates asked her, pointing to the children, "Do you think these suffer against their wills?" to which she stoutly answered

that she did not think so. It went against her that she was deaf and could not hear some of the magistrates' questions; this, said the accusers, was because the Black Man was whispering to her during the examination.

By the middle of May several dozens of Salem citizens lay in jail, waiting trial for witchcraft. The Governor of Massachusetts, Sir William Phips, himself a New Englander and a member of the witch-baiting Cotton Mather's church in Boston, returned to the colony from England and appointed a special Commission to try them, under the presidency of William Stoughton, the lieutenant-governor.

The trials began in the first week of June, beginning with that of Bridget Bishop, who kept a house of refreshment between Salem and a neighbouring town and whom for some reason the hysterical girls had accused. The evidence against her was that her shape (*i.e.*, herself in a diabolical projection) had pinched, choked, bitten, beaten and threatened to drown one of the bewitched persons, unless the latter agreed to sign the Devil's book and so become one of his servants; that she had boasted of her witchcraft; and that ghosts had appeared, accusing her of their death. Next it was stated that, during her preliminary examination, the victims had suffered exceptional tortures and that, when she was told to look at them, she said she was not sufficiently interested. The court was informed that a man had once struck at the prisoner's spectre, and her coat was torn by the blow; when Bishop's coat was examined, it was found to be torn. A poor creature named Deliverance Hobbs, who was seeking safety in confession, declared that she and Bishop used to attend witches' meetings together and that Bishop tried to make her sign the diabolical book. Other witnesses deposed that Bishop's spectre had pursued them; that, after a quarrel with her about a sow, the animal fell ill; that another woman's child suffered from fits whenever Bishop visited the house; and—most potent proof of her guilt—that, when Bishop was being taken to jail, she looked at the big meeting-house at Salem, whereupon one of its planks was thrown from one wall to another. She was found guilty and hanged at once.

It made no difference whether the defendants were sluts like Sarah Good and Sarah Osburn, or energetic churchgoers like Rebecca Nurse and Sarah Cloyse. All who were tried and would not confess their guilt were sentenced to the same fate.

Meanwhile anybody who offended the "victims" by word or deed was denounced and arrested. Only once did they overreach themselves, when they declared that the Rev. Samuel

Willard, the minister of the Old South Church, Boston, was a wizard. He had, to be sure, brought this accusation on himself by expressing doubts about the evidence offered against some of the prisoners, but even the bloodthirsty Mr. Parris refused to imagine him guilty. His denouncer was gruffly informed that she was mistaken.

Another clergyman was less fortunate. The Rev. George Burroughs had formerly been a minister at Salem but, running into debt through the notorious niggardliness of his congregation, had retired. Three accusers now declared that he had appeared to them, summoning them to attend the witches' feasts and to write their names in the Devil's book. Twelve-year-old Abigail Williams further stated that his two dead wives had appeared to her in winding-sheets and accused him of murdering them. Even his exceptional physical strength was adduced as a proof of diabolical possession, as also was his alleged scepticism about the power of the witches. He was hanged in August, together with three other men and a woman.

One of these men owed his arrest to the confessions of his fifteen-year-old granddaughter, who broke down in prison and compromised both herself and him in witchcraft. He was rash enough to adopt a scornful attitude towards the judges. "If you tax me for a wizard," he told them, "you may as well tax me for a buzzard." This sort of humour was not unnaturally regarded as proof of his devilish inspiration.

Martha Corey, the woman who hid her husband's saddle to keep him from the meeting, went to the scaffold, praying devoutly. Though her husband had given evidence against her, he too was accused of identical crimes. He drew up his will and, in order that it might not be invalidated by his conviction on a capital offence, refused to plead either guilty or not guilty before the Commission. He was therefore condemned to be pressed as a contumacious prisoner; that is to say, he was to be laid on the floor of his cell with a heavy iron weight on his body until he should agree to plead. But he stayed silent until death released him from his agony.

By September the Commission had hanged over twenty people, and at least three others had died in jail. On 22nd September no fewer than six women and two men were hanged at one time, so that a devout clergyman could point to them, hanging on the gallows, and remark with professional satisfaction, "There hang eight firebrands of hell." Fifty others had confessed their guilt and been pardoned; scores more were under arrest or in danger of arrest.

Then the accusers, growing bolder with success, made the

mistake of reaching too high. They declared that the wife of Governor Phips was a witch, probably because she had forged her husband's name to an order for the release of a young woman arrested for witchcraft. They also secured the temporary arrest of the richest merchant in Salem, and denounced the wife of one of the most zealous clerical participants in the prosecutions. This was too much. The indignant Governor cancelled the Commission's authority—to the horror of its president, who intimated that Satan was intervening to save his minions—and announced that all further proceedings must be in proper legal form. The trials and executions ceased; the prisoners were released and, of course, the afflicted girls recovered.

Public opinion now turned against the men who had been keenest in the persecution. The Rev. Parris was forced to resign his ministry. One of the members of the Commission devoted a day in each year for the rest of his life to fasting and repentance for his share in the trials and wrote a confession of his errors, which was solemnly read out in church on that day, while he stood up and did penance before the congregation. Much good this did his victims!

It would be pleasant to conclude this account of the Salem witchcraft trials with the reflection that such outbreaks of superstition, natural enough perhaps in the pre-Voltairean seventeenth century, have become impossible, and that people nowadays would never think to take seriously the mischievous pranks of naughty children. Yet only a hundred years ago two other American girls, Katie and Maggie Fox, aged twelve and fifteen respectively, thought fit to produce mysterious raps in their parents' house and thus founded the cult of Spiritualism, which to-day numbers its adherents by hundreds of thousands and persuades them of the existence of marvels not less remarkable than many of those quoted in evidence against the Salem witches.

THE THAW CASE

FOR many people, in Europe especially, the trial of Harry Thaw for the murder of Stanford White brought the revelation that the United States had somehow been transformed from a democratic to a plutocratic republic. The details presented in evidence of the manners and customs of the chief participants in the case; the lavish expenditure by the defence on counsel, witnesses, detectives and legal devices; the fact that, to assist in popularizing the so-called "Unwritten Law" in extenuation of the crime, the Thaw family employed publicity agents and reporters and subsidised the run of a play in a New York Theatre: in short, their unconcealed determination to pour out money to brake the wheels of justice demonstrated conclusively that the stern simplicity of pioneer traditions no longer dominated the New World. To what extent, however, Harry Thaw was assisted by all this expenditure of wealth is another question.

His crime was as simple as its motives and results were complex. On the night of 25th June, 1906, the first performance of a play called *Mam'zelle Champagne* was being given in the Madison Square Roof Garden Theatre. Many of the audience sat at tables, in order that any deficiencies in the play and the box-office receipts might be compensated by the consumption of food and drink during its progress. Sitting alone at one table was Stanford White, the leading architect of the day—no mean distinction in a country so devoted to new buildings as America—famous, wealthy and a genius in his profession. The theatre in which he sat was one of his own design and construction. At another table, nearer the stage, was a party consisting of Harry Thaw, the son of a Pittsburg millionaire, his beautiful young wife, and two male guests. Bored with the play, they rose in the middle of the second act and strolled towards the lift. Thaw, a young man in the middle thirties, stopped at Stanford White's table and, without a word, shot him three times point-blank, killing him. The murderer then lifted the revolver by its muzzle, to show that he intended no further harm, and allowed himself to be seized by officials of the theatre. "I've got to go down the elevator anyhow," he said to them; "can't you take me now? I don't wish to annoy these people." His wife cried, "Harry, what have you done? What have you done?" to which, kissing her, he replied calmly, "It's all right,

dearie; I've probably saved your life." "But, my, you're in an awful fix," she reasonably observed.

That a millionaire should murder a famous architect in a public place was sensational enough; and public interest was increased by hints that the trial would produce scandalous revelations in the life of both men. "Mad Harry" was already notorious in certain circles for his extravagance and debauchery, while Stanford White, despite the fact that he maintained a respectable position in society and had a son at Harvard, was suspected of a taste for the society of very young girls, including, a year or two previously, Evelyn Nesbit, now Mrs. Harry Thaw. Her husband had already informed the reporters at the police-station, between puffs at a cigar, that he had killed White to avenge his wife's honour. Rumours that he was receiving luxurious entertainment in prison mingled with reports that his wife protested her intention to help him with all her power, and that his widowed mother, who was on her way to England to visit her daughter, the Countess of Yarmouth, had heard the news of the murder on landing at Liverpool and immediately taken passage back to New York.

Before the coroner, Thaw refused to answer questions and demanded legal assistance, which he soon received in more than full measure. Indeed, if ever a man suffered from a multitude of counsellors, this was Thaw's fate. In the opinion of Mr. Olcott, the first lawyer engaged on his behalf, his only hope was to be found unfit to plead through insanity, which meant that he would be sent to an asylum and not be tried for murder: Mr. Olcott engaged a prominent alienist, Dr. Hamilton, who examined Thaw in prison, decided that he was insane, and discovered that there was a satisfactory record of mental instability on both sides of his family. But Thaw and his mother strenuously objected to this course, Thaw declaring that his counsel and the doctor and everybody else who advocated it were endeavouring to prevent a public trial in order to save Stanford White's reputation, while his mother objected to any public disclosure of the family's medical history.

Mr. Olcott was promptly superseded by two other lawyers, Mr. Hartridge and Mr. Peabody, who prepared a defence on the assumption that Thaw was only temporarily insane at the time of the crime, and engaged the services of a fashionable Californian advocate, Mr. Delphin M. Delmas, in association with a personal friend of Thaw, Mr. John B. Gleason, and two others. It became known, even before the trial opened, that these gentlemen were not wholly agreed in their views of the

best way to conduct the case. The prosecution was entrusted to Mr. Jerome, the famous District Attorney of New York State, who was certain to conduct it with a single-minded purposefulness not lessened by his publicly expressed desire to show that all the Thaw millions could not turn him and his department one inch from the path of duty.

On 23rd January, 1907, six months after the crime, the trial began before Judge Fitzgerald. Much delay occurred in selecting the jury, over three hundred men being called before twelve were chosen. Since some form of insanity was to be an issue at the trial, they were made to swear that they would give their verdict strictly according to the definition of insanity in the legal code of New York. The reader may be interested to know that the main sections relating to insanity are as follows: "*An act which is done by a prisoner who is an idiot, imbecile, lunatic or insane is not a crime. A prisoner cannot be tried, sentenced to any punishment, or punished for a crime, while he is in a state of idiocy, imbecility, lunacy or insanity, so as to be incapable of understanding the proceedings or making his defence,*" but, as in England, "*a prisoner is not excused from criminal liability as an idiot, imbecile, lunatic or insane person or of unsound mind, except upon proof that, at the time of committing the alleged criminal act, he was labouring under such a defect of reason as either (a) not to know the nature and quality of the act he was doing; or (b) not to know that the act was wrong.*" Further, "*a morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defence to a prosecution therefor.*"

The preliminaries dragged on till 4th February, when the prosecution briefly described the shooting and, claiming that it was a "cruel, deliberate, malicious, premeditated taking of human life," demanded a verdict of murder. Witnesses testified that Stanford White was alone, that he was sitting in a careless posture with one arm on the table and the other thrown over a chair, that Thaw gave him no warning before shooting, and that he had no opportunity to defend himself. There was some uncertainty about Thaw's explanation afterwards: one witness thought he said, "I did it because he ruined my wife," while another gave the last word as "life"; and there was also a slight discrepancy between the accounts of what he and his wife said to each other. But the main facts were not in dispute.

The confusion in Thaw's camp was plain from Mr. Gleason's opening speech for the defence. First, he announced that "We dismiss entirely from our thoughts, and ask you to

dismiss entirely from your contemplation or his lawyers claim the protection of the law" than those of "this Imperial defence," said Mr. Gleason, would show without malice or premeditation and in defence, induced by the threats of Mr. defendant." Secondly, the defence proposed that Stanford White "under the delusion that it was an act of Providence that he was the agent of Providence to kill Stanford White." Then, as if to destroy any plea of *temporary insanity*, Gleason declared that Thaw's mental condition at the time of the crime and for three years previously had been affected by hereditary insanity which had been brought to the surface of his mind by certain acts of the dead man. Mr. Gleason proceeded to give particulars of these acts. He told the jury that Thaw had met the sixteen-year-old Evelyn Nesbit in 1901, five years previously, had escorted her and her mother to Europe in 1903 and had made her an offer of marriage, which she at first refused for reasons "connected with an occurrence in her life with reference to Stanford White." The effect of her story—which she would repeat on the witness-stand—was to make Thaw consider it his duty to kill the architect, whom also he supposed to be threatening his life, this being the reason why he carried a revolver in New York but not elsewhere. On the night of the crime he saw White "glaring" at him, and "acting under the belief that it was an act of Providence for him to kill Stanford White and that this act was right and not wrong, he turned and went coolly down, as a gentleman might walk down to speak to a friend, and shot that man," continuing after the murder to behave "as a gentleman," under the domination of his insane impulse.

Mr. Gleason, having thus led the jury up three somewhat divergent paths, proceeded to call as his first witness a Dr. Wiley, to whom he put the usual hypothetical question, asking whether, on the assumption that a man did what Thaw was known to have done, the doctor could give an opinion on his sanity. Dr. Wiley replied that, in his opinion, any hypothetical man who did what Thaw did must be insane. Cross-examined by Mr. Jerome, however, the doctor confessed that he could not recall anything from any book on mental diseases, or even name such a book. Why the doctor should have made these extraordinary admissions is not clear, though anybody handicapped by the conflicting demands of the defence might well take refuge in assumed ignorance. Then the Thaws' family doctors testified that Harry Thaw had been a nervous child and suffered

when they tried to show that other
 been insane, the prosecution success-
 apt to call a witness who would testify
 had used threats against Thaw was also
 prosecution.

A fiasco, Mr. Delmas threatened to retire from
 e not given full control over the presentation
 He gained his point, and from this inoment the
 erer strength. For one thing Mr. Delmas succeeded,
 Mr. Gleason had failed, in calling the witness who was
 ay to describe Stanford White's threats against the prisoner.
 This man, a stage-door attendant, testified that, on Christmas
 Eve, 1903, the architect had called for Evelyn Nesbit after a
 performance and, learning that she had gone out with Thaw,
 pulled out a revolver and said he would kill the prisoner. Soon
 afterwards Mr. Delmas called Mrs. Thaw herself. He asked her
 to tell the court, not what she had suffered at Stanford White's
 hands—which would have given the prosecution many oppor-
 tunities to object to parts of her evidence as inadmissible—but
 what she had told her husband that she had thus suffered.
 The ostensible purpose of this testimony was to show the effect
 of her story on Thaw's mind, but Mr. Delmas's real aim was,
 of course, to persuade the jury that Stanford White deserved
 his fate.

Evelyn Thaw made an admirable witness. She was beautiful,
 young, modest but not hesitant, and apparently ingenuous.
 She described her father's death, her mother's noble but
 unsuccessful attempts to provide her two children with
 adequate food and education, and how, at the age of sixteen,
 she herself became an artists' model and entered the chorus of
 a musical comedy company. Then she met Stanford White, who
 invited her and another girl to lunch in his house and, taking
 them to a room in which was a red velvet swing, induced them
 to swing on it until they touched a Japanese paper umbrella
 spread across the ceiling. This revelation made a profound
 impression on all who heard it and was quoted with shocked
 enthusiasm by the world's newspapers. White, she said, sent
 her presents, gave her supper—at which he would not allow
 her to drink more than one glass of champagne—and con-
 ducted himself in so fatherly a manner that even her mother's
 suspicions were calmed. Indeed he soon made it possible for
 Mrs. Nesbit to visit friends in Pittsburg by promising to take
 good care of Evelyn in her absence: "Mamma told me he was
 a very grand man, and afterwards she went to Pittsburg." But
 during the mother's absence Stanford White invited Evelyn to

his studio one evening and gave her another glass of champagne: "I don't know whether it was a minute or two after, but a pounding began in my ear, a thumping and pounding; then the whole room seemed to go round. Everything got very black." When she came to, said the witness, she found herself in a room covered with mirrors. Stanford White sought to calm her and made her swear not to tell her mother what had happened, adding that all women were bad but the wise ones were not found out.

About this time she met Harry Thaw, who told her that she was too young and pure to be on the stage and offered to send her and her brother to school. Her mother did not accept this offer, but allowed Stanford White instead to send her to school. There she was taken ill and underwent an operation; during her illness Thaw was extremely kind and, when she recovered in the summer of 1903, he took her and her mother to Europe for some months. In Paris during this journey he asked her to marry him. When she sadly refused, Thaw extracted from her the whole story of her betrayal, working himself up into a state of great excitement. He still begged her to marry him, but she again refused, and returned to America without him. There she renewed her acquaintance with Stanford White, who, she said, tried to poison her mind against Thaw by stating that he was a madman, a drug-fiend and a sadist. The architect even took her, she told the court, to his lawyer, the notorious Abe Hummel, who, after showing her documents relating to an action that another woman was bringing against Thaw, tried to persuade her to sue Thaw for breach of promise. This she would not do; nor would she sign an affidavit that Hummel drew up in her name, charging Thaw with flogging her, stealing her jewellery and seeking to compel her to bring false accusations against Stanford White. She had on another occasion, however, signed a paper, without reading it, for Stanford White who also persuaded her to hand a number of Thaw's letters to Hummel and advised her to refuse to see Thaw when he returned to New York. But Thaw assured her that the various allegations against him were slanders, and they became friends again. Hearing of her visit to the lawyer's office, Thaw asked her if she had signed any papers about him; she said she had not, then, remembering the paper which she had signed for Stanford White, she rang up the architect and insisted on seeing it. He refused to show her its contents, but burnt it—or pretended to do so—at Hummel's office in her presence.

In the following year, 1905, Evelyn Thaw continued, she

underwent another operation, for which Thaw paid, and married him. He appeared still to be obsessed by the thought of Stanford White's ill-treatment of her, even waking her at night and tearfully asking her questions about it. He also sent a complaint against Stanford White to the New York Society for the Prevention of Vice.

Evelyn Thaw's evidence deeply affected the jury, especially when the prosecution delayed cross-examining her until other witnesses should have been called for the defence. Some of Thaw's letters were read out to show how unbalanced he had become on the subject of his wife and Stanford White. Their incoherence was intensified by his occasional references to himself as "He" and by his faulty spelling; he usually, for example, described Stanford White as the "blaggard." The general tone of the letters may be gathered from a typical passage (the spelling of which has been corrected) in a note addressed to his lawyer after Evelyn had left him in Europe:

Should I manage her again I shall know that he can thank me for any faith, human or divine, she has, and that I can do no more but make the best of it, which exception or conscience was far from bad, except for regrets compared to which every mistake, fault, foolishness or badness, every loss, every illness, every illusion destroyed, every opportunity missed—all these altogether are but as a spilled glass of water in a river to the last barrel of a disabled ship, found poisoned. I did not start to write poetry. I should have stated scientifically that every other misfortune is trivial, is nothing, for it is $x : x$ and x , whether 1 or 100 in relation to x equals $ox : x :: x : o$.

One may sympathize with a lawyer who receives such communications from a client, however wealthy.

At this point the trial was delayed by the serious illness of the wife of a member of the jury, who was permitted to visit her. She died, and it seemed that the juror might claim the right to retire, as being no longer able to give his mind fully to the case, in which event the entire proceedings would have to be reopened before a new jury. After a short interval, however, he undertook to continue his duties and the defence went on with its evidence. The next item of importance was the reading of Thaw's will, made on his wedding day, which instructed his executors, in the event of his dying an unnatural death, to spend large sums in tracing the guilty parties; it also made provision for a trust fund to assist young women to bring actions against Stanford White.

The defence now called more medical evidence. The first witness, Dr. Wagner, was stopped by the prosecution from repeating his conversations with Thaw in prison, but, before he left the stand, Mr. Delmas asked him a long hypothetical question, which took over a quarter of an hour to put and included a summary of Evelyn Thaw's statements as well as references to Thaw's letters. It ended with the words, "I ask you, doctor, to state upon these facts, and the light that these letters showed upon his mental condition, what, in your opinion, was the condition of the defendant, assuming him to be the person that I have referred to in my question, at the time the fatal shot was fired?" Dr. Wagner gave his opinion that Thaw, at the time of the murder, was labouring under such a defect of reason as not to know that his act was wrong.

He was followed by another alienist, Dr. Britton Evans, who described Thaw in prison as exhibiting symptoms of megalomania and persecution-mania. Thaw had told him that a conspiracy existed to "railroad me to an asylum"; Mr. Jerome, the District Attorney, was a party to it, as was Mr. Olcott, the lawyer originally engaged for the defence, but the chief agents were Stanford White's friends. In regard to the murder, Thaw had told Dr. Evans that "Providence took charge of the situation; this was an act of Providence. Had it been my judgment, I would have preferred for him to suffer the humiliation and all that comes from laying bare this matter of his doings before a court and before the public." Dr. Evans made a further statement of great value to the defence: "As a result of my observations," he said, "I was then and am now firmly of the opinion that, during my first three visits, Harry K. Thaw was of unsound mind, because of diseased conditions of the brain. At each successive visit this mental condition was still impaired, though somewhat improved over the condition I found on my first three visits. The condition was one of gradual improvement." This was precisely what the defence wished to show, namely, that Thaw had been insane at the time of the murder, but was now sane again.

Six weeks after the beginning of the trial, the defence called its last witness, Thaw's mother. She had not very much to tell, except that her son had been greatly troubled by his anxiety and love for Evelyn Nesbit, whom he begged her to take into their house as his wife. "I said I would, if her past could be a sealed book."

Mr. Jerome now had Evelyn Thaw recalled for cross-examination. He quickly forced her to add a number of facts to her original testimony. She admitted that she had received

a weekly allowance from Stanford White; that she had corresponded with Stanford White while she was travelling with Thaw in Europe before their marriage; that she had given each man's letters to his rival; and that she could not remember when precisely she had suffered her alleged misadventure in the architect's studio. On the last point the witness retorted that Mr. Jerome should obtain this date from her mother, Mrs. Nesbit, with whom she had quarrelled and who was now notoriously providing the prosecution with much of its information. Replying to further questions, she agreed that she had remained friendly with Stanford White and other men after her betrayal, though she insisted that she was always chaperoned by her mother; that not all her operations had been of an ordinary surgical character; that she had used a letter of credit, given to her by Stanford White, on her European holiday and had also received money from him after her return to New York; and that she had travelled through Europe as Thaw's mistress, leaving her mother in London. The affidavit which she was alleged to have signed in Hummel's office was produced; she insisted that the true document had been burned, but admitted that the signature at the foot of this affidavit resembled hers. The jury ceased to be as sympathetic to her as before her cross-examination.

An attempt by Mr. Jerome to show that, on the night when Stanford White was said to have seduced her, he was really entertaining a party in his studio, was ruled out because the facts of that night were not in evidence: all that the astute Mr. Delmas had put before the court was the account of them which Evelyn Thaw had given her husband. Further evidence called by the prosecution included that of Stanford White's brother-in-law, who said that Thaw, only a few minutes before the murder, had offered to give him the address of a "buxom brunette" and discussed a recent homicide with him in a rational and orderly manner. The policeman who arrested Thaw declared that he was "more rational than irrational." A chemist was called to say that—outside sensational fiction, perhaps—he knew no drug corresponding to that which the defence charged Stanford White with administering in a glass of champagne to Evelyn Thaw.

Then Mr. Jerome produced Abe Hummel, the lawyer, to give evidence about the affidavit that she was alleged to have signed in his office. The defence, which had taken care that her version of the story was included in her original evidence, now objected to Hummel's being allowed to answer questions about it on the ground that he was, on that occasion, acting as her

legal adviser and was, therefore, debarred from disclosing what had been said. It was also recalled that Hummel had recently been successfully prosecuted by Mr. Jerome for perjury—hardly a recommendation for him now as a State witness. After a long wrangle Hummel was permitted to testify within certain limits; and his account of the affidavit incident contradicted Evelyn Thaw's at several points. According to him, Evelyn Thaw had denied telling her husband that Stanford White drugged her; it was Thaw who tried to make her put forward this charge. Clearly, if Hummel could be believed, the defence's argument that Thaw's mind had been unhinged by Evelyn Thaw's story was nonsense.

At this point the trial took a turn which, however intelligible to New York lawyers, must have seemed to lay observers to border on absurdity. Mr. Jerome, who had hitherto argued that Thaw was legally sane at the time of the murder, suddenly informed the court that, in his view, Thaw was a madman and had been mad at the time of the crime, before it and since. "If the real facts were known," he said, "I have no right to be here trying this man. . . . There is not a man who has watched this defendant sitting here at this table who does not know, as he sits there, that he is incapable of advising counsel." Mr. Jerome referred to several instances of insanity in Thaw's family and repeated that "I deem it my duty to suggest on the record that the mental condition of the defendant, at the present moment and throughout the trial, has been such that he is incapable of properly advising his counsel in his defence." He added that he had warned Thaw's counsel that they were acting unprofessionally in pretending that their client was capable of advising them. Mr. Gleason protested against this suggestion and called Dr. Hamilton to rebut it; but the doctor, making confusion worse confounded, declared categorically that he believed Thaw to be incapable of instructing counsel and to be suffering from an almost incurable form of insanity. The judge, no less baffled than the other principals, including Thaw, appointed a Commission to inquire into the prisoner's present state.

Witnesses were called before this Commission who had been in contact with Thaw in prison; the experts differed, as usual, according to which side called them; and Mr. Jerome declared that "I can prove this man insane: I venture to say that I will be able to convince Your Honours that he is insane and has been insane for a long time." But the Commission decided unanimously that Thaw was sane, whereupon counsel on both sides went back to their original positions—the defence arguing

that he had been temporarily insane at the time of the murder and for three or four years previously but was so no longer, and Mr. Jerome insisting that he had never been insane. From the English legal point of view all this was insane.

From the beginning of the case it was whispered that Mr. Delmas, Thaw's principal advocate, considered that his client's best chance lay in an appeal to the sympathy of the jury by invoking what is commonly called the "Unwritten Law," that is to say, the right of any man who discovers that his wife, sister or daughter (or, for all I know, his aunt and his female cousin) has been wronged by another man, to take summary revenge on the wrongdoer. I need hardly say that no such law exists, written or unwritten, but it is notorious that juries are much influenced by proof that a crime has been committed under such provocation. Mr. Delmas's speech for the defence appealed partly to the written and partly to the unwritten law. After setting out once more the main facts of the case, from his client's point of view, he contrasted Thaw's chivalrous affection for his wife with her mother's action in providing the prosecution with material against her.

"Oh, most unnatural mother!" exclaimed Mr. Delmas. "I have seen the poor little quail, when I was out hunting, with a brood of her young ones huddled in the sand. I have seen the pointer dog come running down upon her, and I have seen the little mother-bird, not so big as your fist, her feathers bristling, fly at the dog, fighting for the protection of her young. Oh, shame, shame, that she, not content with what she had done, would seek to destroy the life of the one human being [Thaw] who was sent by God to her daughter, who came like an angel to her and said, 'Whatever you may be in the eyes of the world, whatever your life has been, I know that your soul is pure, I know that it was not your fault. Come to me and I will protect you. I will fight the fight of life with you by my side. I want you. I will throw my strong arms around you. In the eyes of others you may be stained; in my eyes you are an angel, in my eyes you are the embodiment of all that is pure, and all that is good, you are fairer than Rachel, fairer than Ruth amid the fields of corn.'" This seemed a rather extravagant apostrophe to put into Thaw's mouth and, in view of his eccentric bearing in court, it may not have impressed the jury as much as the lawyer hoped.

He went on to claim that Hummel had committed perjury again in stating that he was not acting as Evelyn Thaw's professional adviser when the affidavit was drawn up. As for the affidavit itself, "Is this her signature? I do not know. How was

this paper concocted? I do not know. My ability to detect the frauds of a convicted felon need not keep pace with his ability to perpetrate them." Then Mr. Delmas, with sublime effrontery, described Thaw's state of mind when he heard that Stanford White, Evelyn's betrayer, had boasted that he would win her back from her husband: "He knew not. He reasoned not. He struck as the tigress strikes the invader who comes to rob her of her young. He struck for the purity of the home, for the purity of American womanhood, for the purity of American wives and daughters. And, if he believed on that occasion that he was the instrument of Divine Providence, who shall say he was in error?"

Mr. Delmas demanded for his client the clemency of the written law, claiming the benefit of any reasonable doubt; and then, in so many words, he appealed to the unwritten law. The alienists, he said, had not classified the insanity under which Thaw was suffering when he shot Stanford White, but it was a species of insanity known to every family man in America: "I will ask you to label it *Dementia Americana*. It is that species of insanity which makes every home sacred. It is that species of insanity which makes a man believe that the honour of his wife and daughter is sacred. It is that species of insanity which makes him believe that whoever invades the sanctity of that home, whoever brings pollution upon that daughter, whoever stains the virtue of that wife, has forfeited the protection of human laws and must look to the eternal justice and mercy of God." Counsel amplified this explanation with a reference to God's promise to punish those who afflict the fatherless child, and concluded, "And I say to you, gentlemen, shall Jonathan die for working this great salvation in Israel? God forbid! No hair of his head shall fall to the ground, for on that day he wrought with God. Gentlemen, I will now leave in your hands the fate of Harry K. Thaw."

Mr. Jerome had now to make his final speech for the prosecution. It was too much to expect that he would treat the issue on the emotional plane to which Mr. Delmas's Californian eloquence had removed it: he was much too clever for that. Mr. Jerome, however, had his own difficulties. Having already expressed the opinion that Thaw was legally mad, and had been mad at the time of the murder and long before it, he was now obliged to argue that the prisoner was sufficiently sane, by the same legal standards, to deserve a verdict of guilty. He wisely proceeded, therefore, to attack all the points made by the defence. *Dementia Americana*, he said, whatever it might mean, was unlikely to impress a jury "east of the Mississippi river" and

"on the Atlantic searboard." (It is curious to observe the local patriotism of advocates in American courts when they are confronted with counsel or witnesses from other parts of the Union.) Thaw, he went on, was no Sir Galahad. Mr. Delmas had spoken of his paying honourable court to Evelyn Nesbit, but "we find him wrapping fifty-dollar bills round the stems of roses, and sending them to a girl on the stage whom he did not know. . . . We find him offering the weak mother a competence to interfere and help him to gain the girl. Honourable court! Are men of wealth and station, however illiterate, as a rule seeking by honourable court young women in the chorus, and are they seeking them by wrapping fifty-dollar bills round American-beauty roses?" Mr. Jerome reminded the jury that Thaw and his wife had travelled round Europe together before their marriage. "This is your protector of the home! This is the man who has struck for the virtue of the American woman!" And he asked bitterly if Evelyn Thaw, "she of the *Floradora* chorus," was really "the angel child that Mr. Delmas would paint her to be."

To his mind, said Mr. Jerome, the crime was simply a common, low, vulgar, sordid murder due to jealousy—"the married man getting away with the girl from the unmarried one, and the unmarried one taking her back and living with her and finally marrying her, and then fearing that the married man would get her back again." If this sort of crime was to be excused on the plea of *dementia Americana*, "we are going to get in this community pretty close to who has the first brain-storm, if he has any enemies about"; while, "if the only thing that lies between a citizen and his enemy is a brain-storm, then, as in a mining camp, every man had better pack a gun and have the first brain-storm." As to Thaw's insanity: if he were insane in Paris in 1903 when his future wife told him the story of her life, and if he continued to be insane three years afterwards when he shot Stanford White, was it reasonable to suppose that he would suddenly recover his sanity for the trial, as the defence affirmed, only a few months later? Was it not more likely that he had been sane all along? Mr. Jerome ended by capping Mr. Delmas's quotations from the Old Testament with two from the same source: "Vengeance is mine, saith the Lord; I shall repay," and "Thou shalt not kill."

Judge Fitzgerald summed up with that unemotional fairness and closeness of argument which often contrast so favourably with the preceding speeches of American advocates. He explained the law referring to justification and insanity. It was no justification for killing a man that his character was bad,

unless there was a question of self-defence; nor was an "irresistible impulse" to commit a crime a sufficient excuse, if the offender was capable of recognizing his legal and moral duty. "If there existed in the mind of the defendant an insane delusion with reference to the conduct and attitude of the deceased, it will not excuse the homicide unless the delusion was of such a character that, if it had been true, it would have rendered the act excusable or justifiable." Moreover, the legal presumption was that a murderer was sane at the time of his crime, and it was for the defence to prove insanity if it advanced that plea; nevertheless the defendant, in this as in all disputed points, was entitled to the benefit of any reasonable doubt. The judge told the jury to choose its verdict from the following possibilities: murder in the first degree, which implied premeditated and deliberate design to kill; murder in the second degree, where premeditation and deliberation were absent, but design existed; manslaughter, which was homicide without the design to kill; or not guilty. If, however, Thaw was found not guilty on the ground of insanity, this must be stated in the verdict.

The jury deliberated for the better part of two days before announcing that they could not agree. Seven of them wished to return a verdict of murder in the first degree; the other five found Thaw not guilty through insanity. The jury was dismissed, and he was taken back to prison.

A new trial began eight months later in January, 1908, before Judge Dowling. Mr. Jerome again conducted the prosecution, but Mr. Delmas retired from the leadership of the defence and was replaced by Mr. Littleton. Again over three hundred citizens were examined before the jury could be chosen; nearly a week passed in this wearisome formality. The prosecution presented the same case as before, with the same witnesses; but, when the defence was opened, it was clear that Mr. Delmas's plea of *dementia Americana* and his appeal to the Unwritten Law had been dropped in favour of a straightforward defence of insanity—for advising which, it will be remembered, Thaw's first lawyer, Mr. Olcott, had been snubbed and dismissed. Mr. Littleton admitted frankly to the jury that "I bring you no story of a man who was strong and virile and active, and who suddenly, under the power and acuteness of a passion, was overthrown and then suddenly restored again." Instead he gave a list of various people on both sides of Thaw's family who had shown symptoms of insanity. "No man," he said, "can flee from that fever which burns in his blood at his birth, and will burn in his blood till he dies." He called

doctors, nurses and teachers to state that Thaw was abnormal even as a child; it was shown also that he was sent down from Harvard, and that, both on his European journey and afterwards, he had behaved in an insane manner. Even his mother now testified to the presence of insanity in the family, to her son's strangeness in childhood, and to the fact that, from an early stage of his acquaintance with his wife, he was overwrought and had groaned and wept. But Mr. Jerome unkindly produced an affidavit made by Thaw's mother for use in the earlier proceedings, in which she swore that there was no congenital insanity on either side of the family.

Evelyn Thaw repeated her previous story, adding an account of Thaw's attempt to commit suicide in Paris, an incident which, she explained, she had not mentioned at the first trial because "Mr. Delmas said it would make Harry out too crazy." Dr. Wagner now diagnosed the prisoner's disease as "mania-depressive insanity"; he also revealed Thaw's admission that, the first time he saw Evelyn Nesbit, he was told that she was an intimate friend of Stanford White. Mr. Comstock, the notorious secretary of the Society for the Prevention of Vice, testified that Thaw had urged him to make inquiries about incidents at Stanford White's studio and had subscribed to his society's funds. Armed with this evidence, Mr. Littleton insisted that his client was insane both now and at the time of the crime. (Certainly nobody but a fool would subscribe to Mr. Comstock's prurient organization.)

Mr. Jerome, when his turn came, argued that Thaw had been capable on the evening of the murder of distinguishing between right and wrong, which meant that legally he was sane. He reminded the jury of the fact that, earlier that evening, Thaw had played cards in his club with a party of men including his personal attorney, Mr. Gleason, who was still active in the defence. "Is it conceivable," the District Attorney asked, "that Mr. Gleason would deliberately play cards for money with a man who was insane?" If Thaw, he said, could tell a diamond from a spade when playing cards, if he could dress properly to go out with his wife, if he was so calculating as to take his revolver with him, if he could dine and pay the bill for the dinner, if he could talk, as he himself said, "for half an hour friendly" with an acquaintance, if he could be so thoughtful, after killing Stanford White, as to suggest going down in the elevator immediately so as not to annoy other people, if he could tell the policeman that he had shot Stanford White and ask, "Is he dead?" if at the police-station he could discriminate between two brands of cigars and talk to reporters—if he

could do all this, how could he be regarded as insane? "If you can see it," Mr. Jerome told the jury scornfully if insincerely, "by all means give him the benefit!" If Thaw had shot Stanford White, he went on, as soon as he heard how the latter had wronged Evelyn Nesbit, some excuse might have been made for him; but he had waited for three years before committing the murder. Mr. Jerome ended by telling the jurors that it was their duty to find Thaw guilty of murder in the first degree, "if you believe he knew it was Stanford White he killed."

After more than a day's consideration, the jury reached agreement. It found Thaw not guilty, because he had been insane at the time of the crime. Thaw's delight at their verdict was suddenly checked when the judge stated that, since it appeared from the evidence that Thaw was liable to a recurrence of such attacks of insane violence, his discharge from custody would be dangerous to the public safety and that he would therefore be committed to an asylum for the criminal insane.

Mr. Littleton probably anticipated this result. In any case, having saved his client's life, he now set to work to obtain his release. This could most easily be done by satisfying a judge of the Supreme Court that Thaw had regained his sanity, and an immediate application was made to the Court. It was considered by Judge Morschauser in May, 1908, four months after the end of the second trial, and was dismissed, the judge holding that Thaw ought not to be released until it was reasonably certain that there was no danger of a recurrence of the worst forms of his insanity. The defence then applied to have him taken to Pennsylvania to appear in his bankruptcy proceedings, the reason being that, once across the border of New York State, he could not be sent back there on the sole ground of insanity. But this scheme also failed.

In the following year another trial of Thaw's sanity was demanded by the defence. Mr. Jerome once more conducted the case against him, reinforced this time by one of Thaw's earlier lawyers who, quarrelling with his client, had revealed to the State various unsavoury details of the latter's earlier life: thus a New York brothel-keeper testified that Thaw had flogged women in her house, a statement which seemed to bear out some of the charges in his wife's affidavit produced by Abe Hummel, the lawyer, in the original proceedings. Thaw denied these incidents, and it was held by the judge that, even if true, they were not sufficient evidence of insanity. His wife, with whom he was now apparently on less friendly terms, stated that he had threatened to kill her if he were released; he denied this

story also. But Judge Mills decided that he was still insane and must go back to the asylum.

Three years later again, in July, 1912, another application was made for his release. Mr. Jerome again opposed it, and Thaw's counsel denounced him as "a human hyena who has followed on Thaw's trail for six years, befouling and bespattering him with irrelevant filth." Judge Keogh ruled that, though Thaw's demeanour in court showed an improvement on his previous state of health, he was still insane.

Thaw in desperation sought another way to freedom. In August, 1913, he made a daring escape from the asylum with the aid of a friendly warder. Two days later, after various exciting adventures—including recognition in a train by a police officer—he was arrested in Canada. Mr. Jerome hastened across the border to demand his extradition to New York. What might have become interminable legal proceedings were cut short by the Canadian immigration department, whose agents kidnapped Thaw and ran him across the border into Vermont, whence he was at once driven by friends to the more hospitable State of New Hampshire. There a Commission was promptly appointed to inquire into his insanity, and on 11th January, 1914, its members unanimously declared that, whatever might have been his condition at the time of the murder, seven and a half years previously, he was now legally sane and could be released without any reasonable prospect of danger to the public. Despite this triumph, he was extradited to New York on a conspiracy charge in connection with his escape. But now at last the tide had turned for him, even in New York: he was acquitted but sent back to the asylum.

In June, 1915, he made his final application for release. Mr. Jerome did not appear for the State, a fact which gave the defence high hopes of success. Numbers of people, with whom Thaw had come into contact after his escape, were produced to testify to his sanity. He himself gave evidence for several hours, showing complete command over his words and actions. The State could only repeat the old story of the crime and assert that he was merely concealing his madness from the court. The result was inevitable. He was found to be sane, and released on bond. Soon afterwards his marriage was dissolved, and he faded out of the limelight that had played on him for so many years. When he was refused admission to England in 1931, at the age of sixty, his name can scarcely have been known to many of those on both sides of the Atlantic who read of the incident in the Press. He died in 1947.

It has often been said that only Thaw's family wealth saved

him from the capital penalty or, if not that, from life detention as a criminal lunatic. On the other hand, Mr. Jerome, whose vigour in pursuing Thaw (and in claiming that he was either sane or insane, according to the exigencies of the moment) has sometimes been unfavourably and unjustly criticized, made his own standpoint clear when he told the judge in the New Hampshire proceedings that, "From the very hour when Stanford White lay dead on the roof-garden in the city of New York, it was clear that his life had been taken either by a murderer or a lunatic, and from that time to this it has been said that in the end the Thaw money would defeat the ends of justice. But the State of New York will not permit justice to be defeated by the corrupt use of money if it can prevent it." It is clear, therefore, that the more Thaw's millions were used by the defence in often ill-directed attempts to save him, the more relentlessly did the prosecution seek to secure his conviction. As in the case of Leopold and Loeb, Thaw's wealth handicapped him as much as it helped him. Had he been a poor man, he would probably have been declared unfit to plead at the outset of the proceedings, while his gradual but undeniable return to sanity would presumably have gained his release in the end, though this perhaps might have been longer delayed. One cannot reasonably doubt that the facts in this curious case were precisely what the various courts decided, namely, that Thaw was a madman when he shot Stanford White; that he grew progressively saner in the next nine years, largely through the salutary discipline of imprisonment; and that, when he for the last time appeared in custody, he was sane again.

Thus, as Mr. Jerome desired, justice was done—even in the State of New York.

THE END OF THE JESSE JAMES GANG

UNTIL the comparatively recent rise of the city gangster with his armour-plated car and tommy-gun, the exploits of Jesse James and his brother Frank, who flourished in the late sixties, seventies and early eighties of last century, were rightly and proudly considered to be the most outstanding specimens of organized American lawlessness. Nor are the brothers forgotten to-day, though their actual misdeeds are little known; Jesse James's name is still a synonym for daredevil ruthlessness, and he remains the archetype of the American bad man. His brother, Frank, is less often recalled, but it was his trial which first acquainted the outside world with the enormity of the gang's misdeeds and which also signalized its extinction.

The germ of the James gang came into being just before the Civil War in the Kansas troubles, which are also notorious as the scene of John Brown's emergence. The enmity between the Kansas anti-slavery "jayhawkers" and the Missourian pro-slavery "border ruffians" or "bushwhackers" did not cease with John Brown's compulsory retirement from the conflict; instead, it grew even more bitter as its original political causes were forgotten, and both sides could devote themselves wholeheartedly to murder and plunder. One day (so the story goes) a band of Kansas freebooters attacked a Missourian wagon-train on the trail to the Far West, killed its leader, a man named Quantrell, and left his brother for dead. The brother recovered from his wounds and, discovering the identity of the assailants, determined on revenge. He pretended to be a Kansas man, joined their band and, in the intervals of teaching school, killed them off one after another until only three remained. Persuading these to accompany him in an attack on a farmer across the Missourian border, he betrayed them to their intended victim. One was shot outright as they approached the farm; the other two were wounded, but escaped to the woods. They were soon traced: the farmer killed one, and Quantrell killed the other, thus completing his vengeance for his brother.

This story, however, is vehemently denied by Kansas sympathizers, who claim that Quantrell invented the incident of his brother's death as an excuse for his undoubted treachery to his companions. In any case, Quantrell found it convenient, when the Civil War broke out, to forget his original Union sympathies and to take service in the Southern army, where he

soon distinguished himself as a guerrilla leader. Among the young men who followed him were two sets of brothers—Frank and Jesse James, and Bob, Jim and Cole Younger. The Youngers, like Quantrell, belonged to a fairly decent family of Northerners, but their father's murder by some Kansas soldiers in the early days of the war brought them into the Confederate ranks. Frank and Jesse James, aged eighteen and fourteen respectively when fighting began, had a less respectable background. Their father, who was a farmer and a Baptist minister, died when they were little; their mother, Zeralda James, remarried twice and seems to have encouraged them to look to violence for their livelihood.

Quantrell's force became notorious for its ferocity. Its most notable exploit was to raid Lawrence, in Eastern Kansas, where it butchered two hundred men, mostly civilians, plundered a bank and did damage amounting in all to a million and a half dollars. The Federal authorities promptly outlawed Quantrell and his followers, who were also repudiated by the Confederates. Out of favour with both sides, Quantrell retired to Texas, robbing and murdering Federals and Confederates indiscriminately, and then moved on to Kentucky, where he was ambushed and killed. At the end of the war Kansas demanded the extradition of the other members of the gang in order to try them for the raid on Lawrence, but they evaded arrest and continued their career of brigandage.

Jesse James, now fully grown, showed himself the most daring and bloodthirsty of them, as he was also their best horseman. He shared the leadership with his brother, and they quickly made their name known all over the Middle West. The band never exceeded seven or eight in number; as one or another was killed or arrested, Jesse and Frank James recruited fresh talent and embarked on new crimes. The number of their offences is incalculable, if only because it became the fashion to attribute to them every unsolved crime committed in any of half a dozen States, but some of their major exploits may be mentioned.

In February, 1866, a bank was robbed at Liberty, Missouri, and a boy of sixteen killed.

In October of the same year a bank was robbed at Lexington, Missouri.

In March, 1867, an unsuccessful attempt was made to raid a bank at Savannah, Missouri. One of the cashiers was killed.

Two months later a bank at Richmond, Missouri, was robbed, and three civilians were shot.

In the following year, 1868—when, by the way, Jesse James

was accused of horse-stealing and indignantly murdered two of his accusers—a bank at Russelville, Kentucky, was looted. One of the tellers gave the alarm; the gang was fired on and shot its way out of the town, wounding two people. A couple of its members were caught: one was given the mild sentence of three years' imprisonment, while the other broke away and was ultimately shot dead by a sheriff's posse.

In 1869 a bank at Gallatin, Missouri, was raided. John Sheets, the cashier, refused to open the safe and was killed by Jesse James, who escaped on a stolen horse when his own bolted.

In June, 1871, after two years' comparative quiescence (during which Jesse, who was a good Christian, was baptized at a revivalist meeting), they swooped down on Corydon, Iowa, robbing the local bank and a negro preacher who happened to enter when they were at work. Most of the inhabitants of Corydon were assembled a little distance away, laying the foundations of a new school. As the raiders passed them, Frank James called out to them to stop what they were doing and hurry back home to found a new bank!

In the following year the band took advantage of the Kansas City Fair to hold up a man who was taking the race-course receipts to the bank and steal the entire ten thousand dollars. A few months later they robbed a bank at St. Genevieve, Missouri.

The next year again, 1873, saw them engaged in a new type of crime, train-robbery. Derailing an express near Adair, Iowa, and killing the driver, they plundered the passengers and forced the express agent to hand over the money in his safe.

Seven months later they performed an even more audacious exploit of the same kind. They held up the entire staff of the wayside station of Gad's Hill, Missouri, set the signals against an incoming train, and robbed the express car of ten thousand dollars and the passengers of nearly half as much again.

After an interval of ten months, at the end of 1874, they raided a train which had stopped for water at Muncie, Kansas, and took fifty-five thousand dollars from the safe. One of their number, exhilarated by this success, drank himself into arrest and, trying to escape, was killed.

The railroad companies, exasperated by these incidents and dubious of the likelihood of the local authorities' bringing the gang to justice—for the James brothers were more popular in Missouri than the railroad promoters—engaged Pinkerton detectives to deal with them. On the whole, the brothers had

the better of the exchanges. They killed at least three detectives—one being hanged to a tree with a label on his chest warning other Pinkerton men to stay out of Missouri, and another, it is said, being tied like Mazeppa on the back of a horse and left to die. The best the detectives could do was to surround the James home and, under the mistaken impression that Frank and Jesse were inside, set fire to it and hurl a bomb into the flames. The explosion blew off their mother's right hand and killed her youngest child, a boy of five. This little misunderstanding led to the withdrawal of the Pinkerton men and increased sympathy in Missouri towards the James brothers. They were now regarded there as earnest Southern patriots determined to show the overweening North (represented to the average Missourian mind by the bankers and the railroad shareholders) that the South had not wholly lost its traditions of daring chivalry. A typical story that circulated as proof of the brothers' nobility of character was that, after holding up a train, they handed the engine-driver a few dollars from the loot to compensate him for any shock to his nerves.

Having thus strengthened their moral position, Frank and Jesse James returned to public life with a bank robbery at Huntingdon, West Virginia. In the next year, 1876, they took to the railroad again and held up an express at Otterville, Missouri.

Two months later, to end this incomplete catalogue of their earlier triumphs, they raided a bank at Northfield, Minnesota. Jesse James, Bob Younger and a companion entered the building and ordered the officials to open the safe; two more of the party stood on guard at the doors while Frank James and two others waited at a little distance with the horses. One of the bank clerks jumped through the window and, though wounded in the shoulder, roused the town. The bandits ran out, killing one of the other clerks, and exchanged shots with the inhabitants who prudently fired at them through windows and from behind pillars. Two of the gang were killed on the spot; all three Youngers were wounded, as were the James brothers—Jesse losing the top of a finger and receiving a chest wound, Frank being shot through the thigh. The less severely wounded raiders bade their comrades mount behind them and galloped out of range. But the only man in the gang who knew the lie of the land had been killed; for several days the survivors were harried from refuge to refuge by posses from neighbouring towns, until at last Frank and Jesse made off, leaving the others to their fate. A fortnight after the raid the three Youngers surrendered. Brought to trial, they took advantage of the fact

that a plea of guilty carried with it a mitigation of the death penalty and accepted a sentence of life imprisonment.

Frank and Jesse James prudently lay low for three years, nursing their wounds in Mexico and California. Then they collected new assistants and recommenced their depredations. They appeared at Glendale, Missouri, in October, 1879, surprised the stationmaster and held up a train, securing over thirty thousand dollars in booty. One of their men was afterwards captured and sentenced to ten years in jail.

In the following year they turned to an older form of crime: they held up a stage-coach that was carrying a party of tourists to the Mammoth Cave in Kentucky, and robbed the passengers of their money and jewellery.

Their next big affair, though disappointing in its immediate profits, was important in its results. On 15th July, 1881, five of the band boarded a train at Winston, about sixty miles north-east of Kansas City, Missouri; two of them clambered over the coal in the tender and forced the driver to stop, while the other three held up the express agent and the passengers. They shot a ticket collector named Westfall for not obeying their orders quickly enough; John McMillan, a passenger who happened to cross the bandits' line of fire, was also killed, but only fifteen hundred dollars were found in the safe. To make up for this poor haul, they stopped another train seven weeks later near Independence, Missouri, but they were again disappointed, in that they secured only about two thousand dollars.

These two poor hauls were followed by an incident which struck severely at the prestige of the gang. One of its members, Bill Ryan, was captured and tried for his share in the Glendale train-robbery. He was prosecuted by an energetic lawyer, William Wallace, who had been elected prosecuting counsel of Jackson County on a programme that included a pledge to hound down the James brothers. Evidently the electors of Jackson County were beginning to lose their enthusiasm for the James brand of chivalry, though, when the trial began at Independence, Wallace's task was made more difficult by the antagonism of some of the local papers, which declared that he was merely a tool of the Northern railroad interests, by the refusal of his local witnesses to testify, lest they should incur the vengeance of the James's, and by the presence in court of numbers of armed men who made no secret of their friendship with the accused. However, Wallace induced another captured member of the gang to turn State's evidence against Ryan, and was forceful and plucky enough to nerve the jury to convict him. He was sentenced to twenty-five years' imprisonment.

The newly elected Governor of Missouri followed up this unexpected success by persuading the railroad companies secretly to allocate him a fund for the James brothers' capture, and issued this proclamation:

WHEREAS it has been made known to me, as the Governor of the State of Missouri, that certain parties whose names are to me unknown have confederated and banded themselves together for the purpose of committing robberies and other depredations within the State; and

WHEREAS said parties did, on or about 8th October, 1879, stop a train near Glendale, in the County of Jackson in the said State, and with force and violence take, steal and carry away the money and other express matter being carried thereon; and

WHEREAS on 15th July, 1881, said parties and their confederates did stop a train upon the line of the Chicago, Rock Island and Pacific Railroad near Winston, in the County of Daviess in the said State, and with force and violence take, steal and carry away the money and other express matter being carried thereon; and in perpetration of the robbery last aforesaid did kill and murder one WILLIAM WESTFALL, the conductor of the train, together with one JOHN McMILLAN, who was at the time in the employ of the said company, then on said train; and

WHEREAS FRANK JAMES and JESSE W. JAMES stand indicted in the Circuit Court of said Daviess county for the murder of JOHN W. SHEETS [the cashier of the Gallatin bank, killed in 1869]; and the parties engaged in the robberies and murders aforesaid have fled from justice and have absconded and secreted themselves;

NOW, THEREFORE, in consideration of the premises and in lieu of all other rewards heretofore offered for the arrest or conviction of the parties aforesaid or either of them by any person or corporation, I, THOMAS T. CRITTENDEN, Governor of the State of Missouri, do hereby offer a REWARD OF FIVE THOUSAND DOLLARS (\$5,000) for the arrest and conviction of each person participating in either of the robberies or murders aforesaid, excepting the said FRANK JAMES and JESSE W. JAMES; and for the arrest of the said

FRANK JAMES and JESSE W. JAMES

and each or either of them to the sheriff of said Daviess county, I hereby offer a REWARD OF FIVE THOUSAND DOLLARS (\$5,000), and for the conviction of either of the parties last aforesaid of

participation in either of the murders or robberies above mentioned I hereby offer a FURTHER REWARD OF FIVE THOUSAND DOLLARS (\$5,000).

IN TESTIMONY WHEREOF *I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri. Done at the City of Jefferson on this 28th July, A.D. 1881.*

THOS. T. CRITTENDEN.

This was all very unpleasant for the James brothers. Not only had a Missourian jury shown itself so unchivalrous as to convict one of their followers, but they knew that the bait of a fortune might well lead weaker members of the community, and even of the gang, to turn against them. There was indeed a moment when Frank and Jesse suspected each other of meditating treachery.

The proclamation soon bore fruit. Two of the band, Dick Liddell and Bob Ford, quarrelled with a third, Wood Hite, and shot him dead. Liddell, distrusting the future, sent his wife to the Governor to ask whether he could secure immunity for this and other crimes by a voluntary surrender and by assisting to round up his companions. As an earnest of good faith he betrayed one of them, Clarence Hite, a relative of his victim, to the authorities.

Not to be outdone, Bob Ford also angled for a pardon and undertook to get rid of Jesse James. His opportunity came when the latter, who was living at St. Joseph, Missouri, under the assumed name of Thomas Howard, invited him to take part in a bank-robbery at Platte City. A big murder trial was due there: Jesse James rightly assumed that many visitors would help to swell the bank deposits and, what was equally important, that the local sheriff's officers would be busy in court. Ford joined him at his house to perfect their plans. On 3rd April, 1882, the day before they were due to leave, Jesse James indiscreetly laid down his pistols and stood on a chair to dust a picture of his favourite horse; Ford seized the opportunity to shoot him from behind.

Such was the unheroic end of Jesse James, the most notorious American bandit of pre-Prohibition days. Like all good gangsters, he died young: he was only thirty-four when, in the words of the song,

Jesse James's lovely wife
 Became a widder all her life,
 Though her children they were brave.
 Oh, the dirty little coward
 That shot poor "Mister Howard"
 And laid Jesse James in the grave!

Frank James, however, was still at large. So far as Liddell and Ford knew, he had gone South in the hope of curing his consumption; no trace of him could be found. But a few months later he arrived of his own accord at the Governor's office in his invariable black frock-coat, stovepipe hat and black stock fastened with a diamond pin. Handing over his pistols with a magnificent gesture of renunciation, he announced that he wished to end his days in peace and was therefore ready to face whatever accusations, if any, his native State might wish to make against him.

On 21st August, 1883, he was brought to trial on the charge, selected from an overburdened file as the most likely to succeed, of participation in the train-robbery and double murder at Winston two years before. Crowds flocked for the trial to Gallatin, itself the scene of one of the gang's outrages, and the judge showed a proper appreciation of the occasion by transferring the proceedings from the court-house to the local theatre. Admission, he announced, would be by ticket only, and spectators were requested not to bring guns. He had his chair set up at the front of the stage, with the court officials, reporters and privileged lady spectators seated behind him; the prisoner, jury and counsel were accommodated in the orchestra. No fewer than seven lawyers were briefed by the frock-coated prisoner, while five, headed by Mr. Wallace, appeared for the State.

Frank James was quickly identified by several witnesses as one of the men who entered the smoking-car of the train and fired occasional shots through it to persuade the occupants, most of whom had at once crawled under the seats, to remain calm. One of these shots, it was stated, was aimed at the conductor, Westfall; staggering from the wound, he fell off the train from the rear platform of the coach and was killed. Other witnesses deposed that, when the firing began, Frank McMillan lay down on the steps of this platform but, hearing his father's voice inside the car, imprudently stood up again and was hit by one of the bullets. Soon afterwards, the evidence continued, the train stopped and the robbers ran off into a hollow, where horses were waiting; then the passengers emerged from under

the seats and went back along the line to pick up the two dead men.

As soon as the prosecution called witnesses to prove the existence of the James gang, the defence lawyers formally objected. The indictment, they said, referred to a particular murder on a particular occasion, and any evidence about the existence of a gang at other places at other times was wholly irrelevant. They objected also to their client's being described as a robber and a murderer. But the judge overruled both protests.

Dick Liddell, the former bandit, was called. The defence objected that, by Missourian law, Liddell was incompetent to testify, since he was an unpardoned felon who had served a sentence for horse-stealing some years before. The prosecution countered this by producing an official pardon for him, and, after some discussion, he was sworn. He described the Winston train-robbery in detail. He and another man held up the driver, he said, while Frank and Jesse James and Wood Hite entered the smoking-car and robbed the express safe. After the affair, he heard Jesse James say that he had shot one man and that Frank had killed the other; Frank too said that they had killed two men. The defence experienced some difficulty in cross-examining Liddell, because he was entitled to refuse to answer questions that might incriminate him—and, with his record, it was so difficult to avoid such questions. Thus, he refused to speak about the death of Wood Hite, whom everybody in court knew that he had killed just before he gave himself up. He admitted, however, that the gang used to "borrow" horses for their journeys across country: "We didn't ask their owners' permission, they being asleep." But he denied the defence's suggestion that he had told several people that Frank James had gone South for his health before the Winston crime.

Several relatives of Ford, the youth who killed Jesse James, gave evidence against the prisoner, as also did a blacksmith who remembered shoeing his horse the day before the robbery, and a minister who had given him dinner that day. The minister was so positive of the prisoner's identity that, "If he hadn't paid for the dinner, I would now say to him, 'I'd be pleased to have the amount of that board bill.'" This witness added a remark, which was afterwards shown to be important, that he had discussed Ingersoll's anti-religious writings with his guest, who had also declaimed fragments of Shakespeare. Another witness recognized Frank James as a man to whom he had spoken near Winston on the day of the crime, and whose horse he had seen with others belonging to the gang in the hiding-place near the railway track. Another remembered the prisoner

and Jesse James staying at his house; Jesse had a bad tooth which he was treating with creosote, and gave the witness fifty cents to buy him medicine. "I still owe him that sum," said this honest fellow, "because he left before I returned with the quinine." This witness's sister too identified the prisoner: "he seemed to be a very religious man," she added. Some of the evidence turned on the shape and colour of Frank James's whiskers, which he had altered at various times as an aid to disguise.

The defence opened its case by maintaining that the only serious evidence against the prisoner was that of Dick Liddell and the Ford family. But Liddell, they said, was ready to swear away Frank James's life in order to escape punishment for the murder of Wood Hite, while the Fords, having secured a reward for killing Jesse James, had the best of reasons for wishing to put his brother out of the way. Frank James, his counsel claimed, was the victim of circumstances, compromised by his brother's misdeeds; it would be shown that he was far away when this train-robbery was committed. Indeed, the first witness for the defence was a passenger in the train, who said that the prisoner did not resemble any of the bandits. This gentleman was severely cross-examined, and denied telling friends after the outrage that the robbers were fifteen feet tall and used pistols four feet long; alternatively he explained that, if he had said this, it was to put an end to tiresome questions.

The star witness for the prisoner was General Joe Shelby, a bibulous local magnate. He testified that his old friends, Jesse James and Liddell, had both told him that Frank James was sick in the South at the time of the crime. He now saw the prisoner for the first time in eleven years: "He sits right there now. With the permission of the court, may I be tolerated to shake hands with an old soldier who was with me in the Confederate army?" This picturesque request was refused, and the General went on to say that Frank James's wife came to him in distress a few months before the crime, asking him to intercede with the Governor for her husband, who was not only ill but falsely suspected of other men's crimes. The General was closely cross-examined about Mrs. James's visit, which the prosecution suggested was due to the prisoner's desire to rejoin the gang rather than to give himself up to the authorities; the witness turned indignantly to the judge and asked if "the court is going to allow a lawyer to insult an unarmed witness."

After another brush with the prosecution, who suggested that his initials were "J. O. S.," while he insisted that they were "Joe O. S.," it was proposed that the rest of his cross-examina-

tion should be deferred until the General was sober. "General Shelby," said the judge, with true Missourian courtesy, "you are a man that I respect and a man with a State-wide reputation as a gentleman. We did not expect such demeanour from you, sir, in this court-room. I must admonish you that I cannot permit this to go on any further." The cross-examination continued.

In the course of it the General was asked if he had seen Liddell at a friend's house. "I don't like to allude to a visit to a gentleman's home, sir," he replied with dignity, "but I don't mind admitting that I saw Liddell there, curled up like a viper in a rocking-chair." Then he was asked if he had not recently mistaken a harmless stranger in a hotel for Liddell and threatened to kill him. "I have lived thirty-four years in this State," replied the witness, "and never killed anybody yet. That gentleman was seated at the table opposite to me, and he dropped his knife and fork and stared at me. I am not in the habit of staring at men on the street, especially ladies anyhow, and I may have made some casual remark about it. But I did not take out my pistol; anybody who says I did is a liar." At the end of his evidence he again asked permission to shake hands with the prisoner as an old comrade in the Southern cause, but was obliged to content himself with nodding affably at him and saying, "God bless you, old fellow." Next day, the General reappeared in court and asked permission to make a statement. He expressed regret if he had said anything offensive to the judge's dignity, but "as to other parties, I have no regrets to make." The judge instantly fined General Shelby fifty dollars.

The defence also produced a witness to say that Liddell had told him, some time before, that Frank James was always opposed to shooting and that Jesse James had said after the murders, "I thought the boys were pulling away from me, and I wanted to make them a common band of murderers to hold them up to me." The prisoner's mother was called to exhibit her maimed arm and to state tearfully that her son Jesse had been killed two years before and that she had not seen Frank for many years. She admitted, in reply to the prosecution, that she helped the gang after the Winston crime by giving them some women's clothes, in order that, as she said, "they could pass off one of the gentlemen for a lady."

The prisoner gave evidence on his own behalf. He declared that he had always tried to dissuade his brother and Dick Liddell from crime, if only for his mother's sake. His mistaken identification by some of the witnesses as a participant in the Winston train-robbery was due to the unusual family resem-

blance between himself and his cousin, Wood Hite, the man whom Liddell had murdered. At the time of the robbery he was travelling in Texas and the Indian Territory; he could place the time distinctly from his recollection of hearing about the murderous attack on President Garfield, which had occurred about a fortnight before. It was pointed out in cross-examination that, while he could recall all his movements for a long period before and after the crime, he seemed unable to give precise details of his movements at the crucial time. Frank James retorted that Texas was then so sparsely settled that a traveller could hardly hope to remember his surroundings. The prosecution called a few witnesses in rebuttal, especially to show that Wood Hite could not possibly be mistaken for the prisoner: Hite was illiterate, whereas Frank James was notoriously addicted to religious discussions and Shakespearean quotations, both of which characteristics had been observed by independent witnesses in one of the train-robbers.

No fewer than five closing speeches were now made for the prisoner, and four for the State, of which the most important were Colonel Philips's for the defence and Mr. Wallace's for the prosecution. Colonel Philips began with an impassioned appeal to Southern chivalry, always a trump card in Missouri. The prisoner and he had fought on different sides in the Civil War, he said, and it was because he regarded the exploits of the James gang as a direct outcome of this struggle that it was peculiarly suitable that he, one of the victors, should plead for the life of one of the vanquished: "When I saw this last remnant of unreconciled and unaccepted parties to the local predatory struggle suing for reconciliation, offering to throw himself on the justice of the law and the mercy of the commonwealth, asking nothing but fair treatment, with but one aspiration and hope—to devote, if allowed, the remainder of his life and energies to the duties of husband, father and good citizenship, my whole heart went out in congratulations to the good people of this State. To the prisoner, his wife and their little boy, I had but one response to make to their personal appeal to me. . . . On my promise to defend him he came from his hiding and handed his pistol to the Governor of the State. To keep that promise I am here. What brave man with any nobility in his soul will deny the rectitude, the honour, the chivalry of my action?"

He drew a touching picture of the prisoner's moral regeneration when he went South, how he had cut himself loose from his unregenerate brother and, "leaving this State with all his earthly possessions—a two-horse wagon and a young wife"—

moved away under an assumed name to "find a new life of peace in humble, honest industry." There in the South, alas, Dick Liddell had sought him out. "It was the unhappiest day for Frank James in many years when this slimy serpent of evil came crawling around him and, taking advantage of his incognito, gained admission to his fireside and humble hospitality." Frank James ought perhaps to have fulfilled a duty to society by handing over the loathsome Liddell to justice; but he could not do this without at the same time disclosing his own relationship to Jesse James. What, then, was the prisoner to do? From a feeling of duty towards his young wife and son ("that firstborn of happy marriage who came to gladden and lend a new charm to that humble home") he again "broke his household idols" and took refuge in flight.

The Colonel felt sure the jury had been deeply impressed by General Shelby's evidence for the prisoner: "It is but frank in me to admit," he added, "that the General's deportment on the witness-stand was improper, as a matter of propriety; though it hurt nobody so much as himself, and I know he regrets it. But he spoke truth! His high character needs no defence and no eulogy by me. His name is a household word in Missouri. As splendid in courage as he is big in heart, his home is the model for hospitality. No man, however poor or outcast, was ever turned from it hungry. Truth and chivalry to him are as modesty to the true woman and as azure to the sky." This was why the General had not hesitated to "give a bed and a glass of water and a pinch of salt" to the prisoner when he came to him, and to extend the hand of assistance and a word of sympathy to that unhappy man's wandering, heartsick wife, the wife of an old comrade in arms.

All the reliable evidence, Colonel Philips argued, showed that the prisoner told the truth when he said he broke with his brother Jesse's gang before the crime and went South. The prosecution's case rested on nothing more substantial than the lying testimony of Dick Liddell, a man "so morally dead that, like Lazarus, he stinketh in the nostrils of every honest man." Had the jury ever met "such a constellation of atrocities in any one man as this fellow represents in his character? He crawls to this court vampire-like from the jail in Alabama to drink the life-blood of the defendant, and to taint the sanctuary of justice with his false breath instinct with venom and reeking with treachery." By the laws of Missouri Dick Liddell, as a convicted felon, was incompetent to "sit as a juror between you and your neighbour to determine your rights of property as to an acorn-fed hog or as to a sheep with scabs and burrs as orna-

ments," yet the prosecution was ready to produce him to swear Frank James's life away.

What was the rest of the prosecution's evidence worth? The Fords were a "nest of cockatrices," not to be believed. The other witnesses were mistaken in identifying the prisoner as one of the Winston gang. Just as little children think they see a man in the moon because they have been told he is there, said the Colonel, so these foolish people had come to believe that, where Jesse James was, Frank James must also be. The Colonel was contemptuous of these witnesses: one of them, for example, the man who claimed to have seen the horses waiting by the railroad line, was nothing better than "a regular Praise-God-Barebones who, in the absence of camp-meetings and elections, is perishing for a hanging. He is a regular pent-up Utica. I thought he would burst. He sat, one heel on the other of his brogans, threw his head back to the buttons on the back of his coat, and shot up his waistband where his nose should have been." In short, there was not a scrap of trustworthy evidence that Frank James was one of the party who robbed the train at Winston. "If His Honour on the bench were on trial for this offence," counsel told the jury, "you would not hesitate to acquit him on this evidence. Remember, gentlemen, that under the law the life of Frank James is just as precious as the life of His Honour."

Colonel Philips concluded his address with an appeal to local patriotism. "I yield to no man, gentlemen of the jury, in my attachment to Missouri," he cried. "My people, of my blood, stood by its cradle when it was born. With rifle they fought back the savage Indian, trampled down the wild briar and the bull-nettle, and blazed out the paths that have led Missouri to her present splendid civilization. On Missouri's generous bosom, gentlemen, I was cradled. Her honour and glory are as dear to me as the memory of my sainted father and mother who sleep beneath her sod. I am proud of Missouri, gentlemen, of her peacefulness, her laws and her patriotism. I know who are the most lawless and recreant men in this State: they are the miserable politicians and the more miserable editors who malign and slander her good name. I do not think it necessary, in order to appease them or the land agents or the long-haired men and short-haired women who imagine themselves the satellites of a higher civilization attending the star of Empire in its westward flight, that one day out of every seven should be set aside by executive proclamation for the hanging of an old Missourian!" It would be judicial murder, he ended, to convict Frank James in order to satisfy an artificial public clamour:

"Let your verdict be a loyal response to the evidence and the spirit of the law; and, as true manhood ever wins tribute when the passion of the day is past and reason has asserted her dominion, so you will be honoured and crowned. I thank you, gentlemen, for your kind attention."

Mr. Wallace, closing for the prosecution, gave Colonel Philips image for image, bombast for bombast and, to what small degree either side stooped to so dull a weapon, argument for argument. The eloquent counsel for the defence, he said, had spoken of the prisoner's wife; but what of the wife of the murdered train-conductor? He pictured her sitting with tattered garments and streaming eyes on her husband's grave. "Let her sit there, gentlemen! Though her heart be as lonely as the graveyard about her, and her hands as chilly as the rough rock slab upon which she sits, we do not ask even the poor privilege of bringing her here to warm for one moment the tips of her fingers at the glow of your hearts." The prosecution scorned, he said, to make any appeal to sentiment.

He went on to deny the suggestion that the prisoner's voluntary surrender to the authorities was any proof of his innocence. "He considered long and well whether it was safer to brave the dangers that beset him in the black night of [Texan] barbarism, or, taking his chances, with one leap place himself in the full day and blaze of [Missourian] civilization. If in the undertaking he perishes, as the night-bug perishes when it darts into the glare of the electric light, Frank James has nobody to blame but himself." What the jury must decide was the fifteen-year-old conflict between the prisoner and justice: "Which is to be the stronger in Missouri, the arm of the bandit or the arm of the law?"

He well knew, he continued, that some scurrilous tongues hinted that this prosecution was brought at the behest of the Northern railroad companies. How foolish this attitude was! "To me, gentlemen, there is something sublime about a locomotive engine; I can look at it and admire it even if it *do* belong to a rich corporation and even if I have no financial interest in it. Thank God, in the great realm of vision we are all equally wealthy. Rolling rivers, towering mountains, outstretching plains, bending skies, as well as the splendid specimens of human skill that fret our public streams and highways—all these are, in the realm of vision, the property of rich and poor alike!"

Without a break, Mr. Wallace plunged smoothly into the story of the crime. "Yes, what a glorious structure is a railroad engine! When, like a queen of commerce, it comes gliding along

with gorgeous, resplendent coaches for its train, how the law-abiding soul, with never a dream of stopping it in search of plunder, delights to see it speed on in magnificent splendour and manifest power. So the ill-fated Rock Island train departed on 15th July, 1881; so it sped on like a meteor through the darkness until it reached the prairies of your own country. What a splendid spectacle is presented by an approaching train on a western prairie in the night-time! I see that train coming up to Winston with its beaming headlight, now partly obscured in a cut, now out, trembling along like a rolling, radiant ball of fire. Yes, yes, gentlemen, I see that train speeding across the prairies of your own free Missouri, where the protecting ægis of the law is spread over every head and we boast that life, liberty and the pursuit of happiness is guaranteed to every human being within her borders. I hear the rails clicking by the platform. I see the white steam rise. The whistle sounds out in the pure country air and in a moment the train is standing at the depot in the town of Winston. *But Frank James is there to meet that train, gentlemen!* Conductor Westfall, little knowing the sad fate impending, waves his lantern for the last time. The bell rings. The train starts. The robbers are aboard. The fiendish work begins."

It would take too long to offer even a summary of Mr. Wallace's rhapsodic description of the hold-up and the murder of Westfall, but place cannot be denied to his reference to the second victim's standing up on the platform of the car when he heard his father's voice inside. "Oh, I think, gentlemen, I myself know how he heard that voice even in the din of the rattling train and belching pistols. It was the same familiar voice that through all the happy days of childhood he had heard under the old home-roof; the voice that many a time had called him up to his work at break of day—to a country lad the glorious break of day—when rosy-fingered Aurora, sweet dispenser of the morning dew, came dashing in her fiery chariot across the Eastern hills and a thousand birds were twittering greetings to her in the trees. "That's father's voice!" he cried, and bounded to the door. Death met him as he came."

The court-room audience burst at this point into a shout of applause, which was suppressed by the judge's incisive rebuke, "Let me tell this intelligent audience that this applause must not be repeated. Proceed, Mr. Wallace!"

Mr. Wallace proceeded, explaining that he would eschew even the minutest appeal to passion and confine himself to the "dry facts of this double, dastardly, diabolical murder." He emphasized the weakness of the defence's attempt to show that

Frank James was not at Winston. "Were you put in the jury-box, gentlemen," he asked, "as fools, as sticks, or as men endowed by Almighty God with noble reasoning powers?" Was it likely, when the gang returned to Missouri, that the prisoner, one of its two leaders, remained behind? "Shall fledgelings, gentlemen, be brought on a daring flight in search of prey, and one of the parent birds be left at home?" It was clear, moreover, that the wife's return to Missouri just before the crime was not to ask General Shelby to intercede with the Governor for her husband, but to be near him while he and the rest of his gang were busy at their nefarious work. The defence had the audacity to impugn the testimony of Dick Liddell, not because it was untrue, not because it was not fully corroborated by other witnesses, but merely because Liddell had a criminal past. Yet who was to blame if Dick Liddell had strayed from the path of virtue and "left the vocation of a farm-hand to be a bandit and a train-robber?" Who but Frank and Jesse James? "Farewell, Jesse James, prince of robbers," declaimed Mr. Wallace. "Missouri cries a long, a glad, farewell. Cruellest horseman that ever wore a spur or held a rein, seeming oftener like Death himself on his pale horse charging through the land than feeling man, farewell, farewell! Foulest blot that ever marred the bright escutcheon of a glorious State, farewell, farewell! Yes, thou bloody star of murder, hanging for years like a thing of horror in our very zenith, frightening science and civilization from our borders, I condemned the manner of thy taking off, yet I could but join in the general acclaim when, seized with the shock of death, we saw thee reel in thy orbit and then plunge into old chaos and eternal night!"

Liddell's story, Mr. Wallace pointed out on returning to the facts, was confirmed by twelve witnesses who had picked out Frank James as one of the band that held up the train. The number of these witnesses might be regarded as significant because "the religion recognized by the laws of this nation, and which required you to take an oath to God at the outset, hangs also upon the testimony of twelve plain witnesses." Summarizing this part of the evidence, counsel reminded the jury that only Frank James of all the men associated with the gang was capable of discussing literature and religion with the minister at whose house they dined.

He poured scorn on the idea that, because the prisoner had surrendered voluntarily to the law, he should be "conducted like a returning Cæsar in triumph through the land; charming ladies should flock about him as if to kiss his hands and make their lips the redder and their cheeks the rosier; counsel should

only speak of him with becoming reverence; the judge upon his bench should twist the law to suit his case, and jurors in suppliant homage should bend their oaths and issue a pardon to him without leaving the box." While, as for treating him with sentimental consideration as a belated soldier in the lost cause of the glorious South, "Gentlemen, I thought I heard Robert E. Lee, Stonewall Jackson, Sterling Price and all the gallant host of Southern chiefs who slumber by them, roll over in their graves and murmur, No, no, no! Yea, I thought I heard every Confederate graveyard throughout the South yawn in an instant and each and every sleeping soldier come forth in battle-garb from his narrow home, and all shout out in clarion voices, No, no, no! And even as they went back like receding ghosts, I still heard them shouting, No, no, no!"

Colonel Philips ventured at this point to interject the remark that he had never, directly or indirectly, put forward such a plea, but Mr. Wallace waved him aside with the cutting comment, "You're like an old setting hen—cross both off and on the nest."

After a few other scornful references to the defence's appeals to Missourian chivalry, counsel began at long last to approach his peroration. Some of the jury, he said, were young men: it was to their interest that the laws of the land should be upheld and the State be at peace. Some were middle-aged: let not murder and rapine survive unchecked, to assail their families and their homes. And "one or two of you, I see, are growing old, and the silvery locks upon your temples, like whited plumes on the slow-moving hearse, remind you that your narrow home is not far away." Let these remember their solemn duty to hand down justice intact to their children and their children's children: "The eyes of the world are upon you, and the sacred honour of Missouri is entrusted to your charge." Had the prisoner's counsel expressed affection for Missouri? "I too," cried Mr. Wallace, "love my grand and glorious State; I love her forests and rolling prairies; I love her hills and flowing streams; I love her free air and black old soil yielding quick to the touch of man in abundant grain, fruit or flower. And most of all do I love her hospitable, big-hearted people, in whose midst even prowling robbers as in this case—unknown as such except to a few, thank Heaven!—may find, if they choose, abundant food and shelter without a farthing's pay. What a magnificent State, with her hundreds of thousands of happy, prosperous, intelligent, law-abiding inhabitants, and with resources enough within her own boundaries, if tested, to supply their every want; with thousands of miles of railroads built largely with money

received from the toil of her own sons for the welcomed incoming and onward march of progress and civilization; with towering, cultured cities springing up on her borders, fretted within with churches, colleges and innumerable schoolhouses!" Let the jurors, he begged them, show themselves worthy of their State by firmly and impartially carrying out their duty and finding Frank James guilty. The defence, it was true, had claimed that to do this would be to place the stigma of brigandage on Missouri's head; on the contrary, said Mr. Wallace, a verdict of guilty would demonstrate to mankind that Missouri was determined to clear herself of the unjust and slanderous vilifications to which she had been exposed through the wickedness of such unworthy sons as Frank James.

The jury, lashed by this hurricane of eloquence, retired. They came back three and a half hours later with a verdict of—not guilty! No doubt they thought they were doing the best thing by Missouri.

Frank James put on his stovepipe hat and left the theatre a free man. A demand from Minnesota for his extradition in order that he might be tried for his share in the murderous raid on the Northfield bank seven years before, was very properly and patriotically refused by the Governor of Missouri. The bandit prudently decided to settle down in the friendly borders of his home State and, recovering from his consumption, lived on his father-in-law's farm to a peaceful and respected old age. He was more fortunate than the other survivors of his gang. Of the three Younger brothers, one died after a dozen years in jail; the others were paroled for good conduct in 1901, but one of them grew melancholy in the free Missourian air, began to study Socialism, and committed suicide after a few weeks' liberty. Ford, who killed Jesse James, quickly dissipated this reward and was killed in a saloon in Colorado by an insane deputy sheriff. Dick Liddell went north to Chicago and devoted himself to horse-racing; so it is probable that he too died in poverty.

THE SNYDER-GRAY MURDER CASE

OF all the domestic trials that have come before the American courts in recent years, few have attracted so much attention as that of Ruth Snyder and Henry Judd Gray in 1927 for the murder of the former's husband. Not only in the United States but in all other countries where newspapers circulate, vast public interest was shown in this trial, in the facts revealed at it, and in its gruesome end. A crowning touch of the macabre was provided by the reporter who, with hideous enterprise, concealed a tiny camera on his leg and photographed Ruth Snyder as the electrocuting current passed through her body in the death-chair. I have seen the photograph. It shows the woman strapped to the chair, with the wires making contact through a mask on her head and a ring round the calf of her left leg; her face is mercifully hidden, and only a slight haziness round the exposed portions of her body shows that she lived—or had lived. The horror, then, of the photograph is less in its actual appearance than in what it suggests to the beholder's imagination: the same comment might be made on the whole Snyder-Gray case.

It was not a very sensational affair or very romantic in its causes or very tragic (in any other than the headline use of this term) in its development. The three who lost their lives—the murdered husband and the murderous paramours—possessed no qualities of private or public importance. They were very ordinary people. The whole story is just that of a suburban woman married to a man of her own class, seeking illicit delights in the embraces of another and equally unimpressive man, and nerving him to aid her in a sordid and clumsy crime. Then came swift detection, slow waiting for death, and, at last, the electric chair—with the reporter pressing the button of his camera as the executioner pressed the lever of his switch. Perhaps it is the ordinariness of the three central figures that explains their world-wide notoriety; for, when you come to think of it, the whole affair might have occurred—or may occur to-morrow—in any house in any suburb of any city in any country.

Albert and Ruth Snyder lived in one of those New York suburbs which house so many hundreds of thousands of its middle-class inhabitants. Their address—9327, 222nd Street, Queen's Village, Long Island—suggests what their house was

like: with its two storeys, its porch, its labour-saving kitchen, its garage and its small strip of hedgeless lawn, it differed little from most of the other 9,326 houses in most of the other 221 streets of the suburb. If Snyder's position as "art editor" of a periodical suggests a touch of Bohemianism, it is well to remember that his work consisted only of selecting photographs and sketches for a technical paper called *Motor Boating*. His hobby, if somewhat unusual, was wholly unexciting: he rigged model ships. His wife, a woman of Norwegian origin, had been his office secretary and, as generally happens in such cases, she left the office when she married him, and devoted herself to keeping house and rearing their daughter, to whom, with characteristic tastelessness, they gave the unusual name of Lorraine. Indeed, the only originality this couple ever showed in their twelve years of marriage was in regard to names, for Mrs. Snyder persuaded her husband to change his surname of Schneider to its later and more notorious form. Why she did this is not clear, since there seemed little reason to fear the reproach of German ancestry in a place where, as appeared at the trial, the nearest neighbours were named Mulhauser, the first policemen to appear were Schulteis and Max Heyner, and the jury rejoiced in such names as Kramer, Ballweg, Ruckdaschel, Schneider (obviously no relation), Zeigler, Grob and Meissner.

That Mrs. Snyder was, outwardly at least, a normal member of society is proved by the fact that she had won the reputation, not lightly acquired in so hedgeless a neighbourhood, of being a competent housekeeper and an affectionate wife and mother. It is true that her acquaintances later agreed that they had judged her too favourably: they had not thought, for example, to criticize her increasingly frequent habit of spending the night in New York with, as she said, a girl friend. A similar community in England might—and in this case, rightly—suspect that the friend was not necessarily a girl. It was in fact a short, slight, far from handsome, dapper commercial traveller named Judd Gray, engaged in (of all romantic occupations) the sale of corsets.

Mrs. Snyder and Gray first met at a restaurant in New York two years before the murder. Gray, who professed to be happily married at home, found "Momsie," as he nicknamed Mrs. Snyder, a charming and in every way exhilarating companion. She regarded him with equal favour, to the extent even of telling him how unhappy she was with her husband, who preferred rigging his toy ships to her lively conversation, and how much she longed to be free. Nor did she scruple to confess that she had already seven times attempted to take her husband's life.

She had tampered with his whisky and his medicine. Once she had left him sleeping on a sofa and turned on the gas, but he woke too soon. On another occasion she found him repairing his car in the garage: with wifely consideration she brought him a drugged drink and closed the garage door to keep out the cold air, but he managed to open the door before the fumes of the car suffocated him. The effect of this recital on Gray was that he advised her to try a course of Christian Science as a means of ridding herself of homicidal thoughts.

Either she did not take his advice, or Mrs. Eddy's doctrines failed of effect, for she persisted in the belief that Snyder's obstinate refusal to die—especially when she had taken out a fifty-thousand dollar insurance policy on his life, worth double if he fell victim to an accident or violence—demanded more decisive action. Before long she persuaded Gray to assist her in a plan which would make it appear that her husband had been killed by burglars. Gray, for all his spry business mentality, must have been very simple at heart; it does not seem to have occurred to him that he had little to gain by helping to rid Mrs. Snyder of her husband. Though Gray had borrowed small sums from her in the past, he can hardly have hoped, knowing her, that she would share the insurance money equitably with him, while, so far as the permanent enjoyment of her company was concerned, he would still be tied by his own marriage. However, he agreed, apparently without demur, to procure the chief articles needed for killing Snyder—a heavy sash-weight and a length of picture-wire—and to join her in putting them to use. It is uncertain whether he or Mrs. Snyder first thought to provide a bottle of chloroform with which to drug their victim, but perhaps Gray, a much smaller man than Snyder, showed in this respect, and for the first and only time, a faintly intelligent consideration for his own safety. He bought the articles in different towns through which he was passing and, when Mrs. Snyder next met him in New York, he handed them to her in a parcel containing also a new corset; the presence of her nine-year-old daughter was not allowed to interfere with this preliminary transaction.

The night chosen for the murder was wet and depressing; Gray walked about Queen's Village for some time but could not summon up courage to visit his victim's house. But on the next date fixed by the lovers, Saturday evening, 19th March, 1927, atmospheric conditions were more favourable and everything began to go according to plan.

Mr. and Mrs. Snyder and their small daughter started the evening at a neighbour's house. Prohibition being in force, it is

natural that the men became drunk, especially Snyder, whose wife insisted on his drinking her liquor as well as his own. During the party Snyder accused his host's brother-in-law of stealing his wallet, and the two nearly came to blows; the brother-in-law was put outside to cool and, after vainly waiting for some time for Snyder to come out and fight, he drove away. The Snyders went home soon after midnight and undressed for bed. According to Mrs. Snyder's story next morning, she heard a strange noise in the night and, fearing that her daughter was suffering from the effects of the party, went to the landing to investigate. Then, she said, two men of Italian appearance—the Sacco and Vanzetti case was still in the news—emerged from another room, struck her down, bound her and left her unconscious on the floor. She revived some hours later, at dawn on the Sunday morning, and, crawling painfully to her daughter's room, sent the little girl to the Mulhausers' house for assistance. These neighbours came to the house and, after telephoning to the police, persuaded Mrs. Snyder to rest in her daughter's room, keeping from her the dreadful news that her husband lay dead in his bed with severe wounds to his head, his arms and legs bound, his nostrils stopped with chloroform-soaked cotton-wool, and a length of picture-wire wound tightly round his neck.

The police found the whole house in disorder: linen, cushions and papers were strewn across the floors, drawers had been pulled open, and Mrs. Snyder's fur coat and jewels were missing. A crumpled fragment of an Italian newspaper seemed to confirm her guess at the intruders' nationality. But somehow her story was unconvincing. There were no signs that the house had been forcibly entered; there were no marks of a struggle in the dead man's room; many articles were left which burglars usually take; moreover, Mrs. Snyder's bonds did not seem to have been tied very tightly. Why, she was asked, had she not called to her husband for assistance instead of sending their little girl for the neighbours? Mrs. Snyder answered promptly that he was deaf in one ear and always slept on the other, but this explanation only made the detectives more suspicious. Then they discovered her missing fur coat in a cupboard, neatly wrapped in a parcel, and her jewels under the mattress of her bed. Further search revealed the sash-weight, newly scoured, under a heap of coal in the cellar. Mrs. Snyder was asked to accompany the detectives to the police-station.

There she was kept under ceaseless examination for thirty hours, periods of questioning being followed by equally determined attempts to obtain a confession from her by pretences of

sympathy. An indiscreet admission that she had recently quarrelled with her husband about a journey was seized on, and her account of the trip and of her companions was shown to be untrue. Nor could she satisfy the detectives about the identity of her "girl friend" in New York. At last she broke down and declared that the murderer was her lover, Judd Gray, who was spending the week-end at a hotel in Syracuse, nearly two hundred miles away on the other side of New York.

Gray met the detectives, however, with what seemed to be a complete alibi. At his request, the hotel telephone-operator testified that he had rung up from his room at six o'clock the previous evening, asking not to be disturbed, and it was shown that he had apparently posted some letters in the hotel at about the same time. Therefore, as the last train for New York left Syracuse at half-past five, he claimed that he could not have visited the Snyders' house during the night. But, confronted on the way to New York with a Pullman ticket which the detectives had found in the contents of his waste-paper basket, he admitted that his alibi was false. It was afterwards proved that he had enlisted the help of another commercial traveller and, explaining that he wished to spend the evening with Mrs. Snyder without danger of detection by his wife or his firm, induced this friend to go to the hotel room after half-past five, telephone to the operator (who would naturally think the rightful occupant was speaking), and mail the letters. Gray took an afternoon train to New York. When he returned to Syracuse next morning, he told his friend (and he now repeated the story to the police) that Snyder had come home unexpectedly and forced him to hide in a cupboard, from which he saw a pair of Italian burglars commit the murder. The friend, shocked at Gray's predicament, undertook to keep silence about the whole affair and even destroyed a shirt of Gray's, which the latter said had become spotted with blood when he bent over the burglars' victim. Then Gray went to his friend's house and passed the afternoon playing marbles with his host's children and hearing them recite their Sunday-school lessons.

When the police told him that they disbelieved the story of the Italian burglars, he made a further statement. He stated that he reached the Snyders' house during the late evening, when they were at the party; finding a key where Mrs. Snyder had left it for him under the mat, he entered and hid inside one of the rooms. She joined him as soon as her drunken husband went to bed and, overcoming his last scruples with a stiff glass of whisky, led him to Snyder's room. The two men fought violently until Mrs. Snyder drugged her husband with the

chloroform, after which, Gray said, she strangled him with the picture-wire. But the police, having found no signs of a struggle in the dead man's room, knew that Gray was still lying.

He and Mrs. Snyder were charged with the murder, each meanwhile accusing the other of planning and executing the crime.

They were put on trial together on 25th April, five weeks after Snyder's death. Justice Scudder's court-room was crowded with social and theatrical celebrities, and with reporters whose detailed descriptions raised enormous prejudice against Mrs. Snyder, whom they called the "granite woman." The prisoners' confessions were read, but both protested that these had been obtained under duress. An important item of evidence for the prosecution was the discovery that Mrs. Snyder had arranged the huge insurance on her husband's life without his being aware of the amounts involved, and that she at one time fell behind with the premiums but had paid the arrears only a week before the crime. She had even arranged with the postman to deliver only into her hands all the correspondence from the insurance company. Her examination on this point led to a dialogue greatly appreciated by the spectators and newspaper readers.

"And you asked the postman to look out for a big, fat letter?" said one of the prosecuting counsel, a man of considerable bulk.

"Big, fat letter!" cried Mrs. Snyder's lawyer. "You're confusing the letter with yourself."

"That's a bright remark," the other complained.

"It's a most improper remark," commented the judge, and restored order.

Another item which amused everybody except the prisoners and, presumably, the judge was the evidence of a taxi-driver who said that he remembered driving Gray in his cab after the crime because the latter gave him only a five-cent tip on a three and a half-dollar fare; the witness explained that this parsimony caused him to raise his eyes and look intently at his passenger. There was more laughter at a police witness's statement that Gray, after his arrest and first confession, said to one of his guards, "I want to thank you personally for the courtesies which the New York Police Department has shown me."

When the case for the prosecution had been presented, the prisoners' lawyers argued without success that there was insufficient evidence to go to the jury and, alternatively, that a conspiracy could not legally be proved by the declarations of the conspirators themselves. After this the defence resolved

itself mainly into the attempts of each prisoner's counsel to save his client at the expense of the other. Mrs. Snyder's attorney, for example, emphasized his denunciation of Gray by an imitation of that unhappy man, first as a strutting lady-killer, and then as a crouching murderer. "Ruth Snyder," the lawyer added indignantly, "was not the *demi-monde* that Gray would like to paint her, but a real loving wife, a good wife." His client, giving evidence on her own behalf, swore that she found her lover murdering her husband and that she vainly tried to protect Snyder. She explained her earlier attempts to mislead the police as the result of fear, Gray having threatened to murder her too if she did not help him to stage the mock burglary. Also some of her husband's blood fell on her clothes, and she was afraid of being arrested as an accomplice.

At this stage in the trial, Mrs. Snyder, who felt that she had made a good impression on the jury, announced to the Press from her cell that "I hope when this is all over to go away with my child and start life all over again. The ordeal is terrible and I wish it was all over." She also allowed it to be known that she had received one hundred and sixty-four proposals of marriage since her arrest; but she cynically ascribed most of these to the writers' desire to help her spend her husband's insurance money.

Gray's evidence and his counsel's speeches were directed to show that he had taken only a minor share in the crime and had been led into it by a murderous woman who sapped his moral sense with "drink, veiled threats and intensive love." Not only was he dominated by her strong will, they said, but he was so drunk when the murder occurred as to be utterly irresponsible at the time. Six witnesses vigorously testified to his good character.

Mrs. Snyder's lawyers called her nine year-old daughter as a witness, presumably in the hope of touching the jury's hearts, but there was no hope. The trial ended on 9th May with a verdict of guilty against both prisoners, who were sentenced to death. It is understood that the jury believed Gray's final story more than Mrs. Snyder's, and agreed with the judge's view that "Gray committed the murder because he could not refuse to oblige this strong-minded woman."

They were removed to Sing Sing prison, where the other convicts, with an outlook characteristically unlike that of the rest of the public, regarded Mrs. Snyder with pity and Gray with hostility, on the ground that he had betrayed her by his confessions. Mrs. Snyder, apart from all such questions of chivalry, was aggrieved because she had been confident, if not

of acquittal, at least of receiving only a light sentence. Gray, however, admitted the justice of the sentence and showed himself truly repentant.

Their lawyers, meanwhile, explored every channel for a reprieve, putting forward insanity as an explanation of the crime. Mrs. Snyder, they said, was "suffering from a psychosis," while Gray, they pointed out, was reported by the prison doctors to be "not insane" rather than wholly sane. All they achieved was a short respite in the carrying out of the sentence, which was postponed from 13th December to the twelfth of the following month. Mrs. Snyder's nerves were by then too shaken to allow her to hear that Mr. Albert Smith, the Governor of New York, refused to intervene; to the very last moment she anticipated that she would be reprieved and given only a short sentence before being released. About Gray's fate she does not seem to have worried.

His last gesture was characteristic of the better side of his nature: he wrote eleven letters to his little daughter, one of which was to be posted to her on each of her birthdays until she was twenty-one. It is certain that he now realized that, from the beginning, he had been merely an instrument for Mrs. Snyder's desires. If he ever blinded himself to her real feelings towards him, he must have been undeceived by one portion of her confession, when she explained her jewellery's being found under her mattress in these words: "Mr. Gray was going to take away my fur coat to give the impression that the burglars had carried it off, but it was too big. He wanted to take my jewellery, but I didn't trust him with that." It is a revelation of her character that she entrusted him with the murder of her husband but not with the custody of her trumpery jewels.

A curious rumour circulated that she had prepared a plan for her resurrection, in the physical body, in the (as she supposed) unlikely event of her being placed in the electric chair. One of her attorneys afterwards admitted that, reading of a man's being revived with oxygen and adrenalin after a stroke during which his heart ceased to beat for seven hours, he had suggested to Mrs. Snyder that her body should be hurried from the electric chair to a sanatorium where an adrenalin injection might restore her; and it is significant that this lawyer officially asked, in her mother's name, that her body should not be touched before it was delivered to him—ostensibly for burial. But the prison authorities insisted on performing a *post-mortem*, and the experiment was frustrated.

Late in the evening of 12th January, 1928, Mrs. Snyder and Judd Gray were electrocuted.

It is impossible to feel the slightest sympathy with Mrs. Snyder. Her husband was neither brutal nor indifferent to her; nor was any extremity of romantic passion for Gray responsible for the cold-blooded plan which she prepared and which she nerved him to carry out. For him, however, something may at least be urged in extenuation: callous as he must have been, and morally weak beyond normal bounds, he acted through no strong motive of greed or jealousy. He will go down to posterity as one of the few men who, even in America, have committed murder to oblige a lady.

THE TRIAL OF PRESIDENT LINCOLN'S ASSASSINS

IN most wars there comes a moment when one side gains an advantage that makes the final result certain: if fighting continues, it is only through the desperate obstinacy of the losers. In the American Civil War the knell of Southern hopes was rung by the surrender of General Robert E. Lee at Appomattox on 9th April, 1865. For all practical purposes the bloody four years' struggle was over, and Abraham Lincoln, who had just entered on his second term of office as President, could at last look forward to throwing off the hated burdens of internecine war and devoting his generous mind to measures of reconciliation. Nobody recognized better than he the bitterness that had been engendered by the fighting, and the diplomacy needed to bring together again the two sundered sections of his people; it is not unjust to the other Northern leaders to say that he alone possessed the vision and the enlightened sagacity to face the problems of reconstruction with any hope of success. Yet this was the hour chosen by a little group of infatuated secessionists to assassinate him, and thus to pave the way for the long misery and humiliation of the defeated South.

Lincoln had often been warned of plots to kidnap or kill him. When he was urged to be on his guard, he replied sardonically that the only really effective way to avoid all danger would be to shut himself up in a steel box, a precaution which, he suggested, would almost certainly incommode him in carrying out his executive duties. He hinted also that, since his death would automatically invest the Vice-President with supreme powers, the Confederates were unlikely to kill him to make room for either Hamlin, his first Vice-President, or Andrew Johnson, who succeeded Hamlin on Lincoln's second inauguration. In any case there seemed less reason than ever in the spring of 1865 to fear an attempt on Lincoln's life. With victory for the North becoming ever more probable, he had shown himself eager to calm the frenzied partisanship of his colleagues; in his second inaugural address on 4th March he urged moderation on them in these eloquent words, "With malice towards none, with charity for all, with firmness in the right as God gives us to see the right, let us strive to finish the work we are in, to

bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and orphan, to do all which may achieve and cherish a just and lasting peace among ourselves, and with all nations." Moreover, at the beginning of April he had visited the Southern capital, Richmond, Virginia, after its evacuation by the Confederates; though almost unguarded, he suffered neither injury nor insult. What had he to fear in Washington, in the midst of his loyal troops and admiring supporters?

Uplifted by the news of Lee's surrender and its depressing effect on Southern hopes, he decided on the morning of 14th April, Good Friday, to take a few hours' holiday from his work and attend Ford's Theatre for a performance of that successful comedy, Tom Taylor's *Our American Cousin*, which to-day is remembered only by the name of one of its characters, Lord Dundreary. Lincoln sent a messenger to the theatre to engage a box and invited General Grant, the chief commander of the Union forces, and Mrs. Grant to see the play with Mrs. Lincoln and himself. A local paper, the *Evening Star*—which, like other evening papers, seems to have begun publication at noon—announced that they would be present, but the Grants decided during the afternoon to go North; in their place the President invited two young friends, Major Rathbone and his step-sister. The manager of the theatre knocked two boxes into one at the side of the dress-circle, decorated it with flags and a portrait of George Washington, and placed a rocking-chair in it for Lincoln's special comfort. The Presidential party arrived in the middle of the first act and were greeted with wild enthusiasm by the audience and the actors. About a quarter past ten, during the second scene of the third act, a man forced his way into the box from the dress-circle, fired a pistol at Lincoln's head with a shout of "Revenge for the South!" and, stabbing Major Rathbone with a bowie-knife, leaped from the box to the stage, some twelve feet below. As he jumped, one of his spurs caught on the moulding of the box and dragged down a flag with which it was draped; he fell heavily on his left leg, which twisted under him. He rose at once, however, and pausing for a second to raise the bloodstained knife in a dramatic gesture, cried "*Sic semper tyrannis!*"—the Virginian State motto, which may con-

' One of the pleasantest and most characteristic stories of Lincoln is that, about this time, he was serenaded by an exultant crowd of Northerners. He refused to address them on any political topic, but told them that there was a tune which had always been a favourite with him and which he ventured to regard among the spoils of war; so would the band please play *Dixie*, the marching song of the South?

veniently be rendered, "So perish all tyrants!"—and dashed into the wings.

The assassin was recognized by many of the audience as John Wilkes Booth, a young actor of outstanding presence and ability who had played many leading roles on this stage. After a few moments of stupefaction men dashed after him in pursuit, while the hysterical mob yelled for someone to burn down the theatre. It was found that, despite his injured leg, Booth had passed through the stage-door, vaulted on a horse which was waiting there for him and, knocking down the man who held it, galloped away into the darkness.

Meanwhile the great President lay dying. The box was entered with difficulty, for Booth had wedged the door with a wooden bar, and Lincoln was carried tenderly across the street into a private house. He lingered unconscious till morning, when he passed away. The brown thrush, it is said, did not sing that year in his native Illinois.

This was not the only outrage perpetrated in Washington that night. At almost the same moment as the shooting of Lincoln, a tall, muscular, heavily built young man demanded entrance into the house of Senator Seward, the Secretary of State, who lay in bed with a fractured jaw and arm, the result of a carriage accident a few days before. The intruder said that he brought medicine which he must deliver in person, and, pushing past the negro hall-boy who tried to stop him, mounted the stairs to the Secretary's room. When Seward's son peremptorily forbade him to go any farther, the youth pulled out a pistol and aimed it at him. It missed fire, but the intruder struck him repeatedly with the butt; then, bursting into the bedroom, he drew a knife and slashed the sleeping invalid, his daughter, another son and a soldier-nurse, crying, "Oh, I am mad, I am mad!" Having reduced the house to a shambles, he sauntered down the stairs, mounted his horse and rode slowly away, dropping his hat and knife and what was left of the pistol.

It was discovered also that both General Grant and Andrew Johnson, the Vice-President, had been shadowed by strange men during the previous days. One of these had taken a room in the same hotel as Johnson, and watched him eagerly at dinner. It is true that no attempt was made that night on the bibulous Vice-President, but his escape was perhaps due to a sudden loss of courage on the part of the intended murderer, while Grant owed his safety to his sudden change of plans. The existence of an organized conspiracy was confirmed by a search of Booth's room in one of the hotels. Its aim was to remove at one blow

the four chief men in the Union Government, thus leaving the North not only leaderless but unable, by its constitution, to replace them without a fresh national election. Secretary Stanton, at the War Department, at once set detectives and troops on the trail of Booth, of Seward's assailant, and of other people suspected of participation in the crimes. Large rewards were offered for their apprehension.

Booth was one of the best-known actors in the American theatre. His father, Junius Brutus Booth, had come from England with a big reputation in 1821 and settled in America, where his three sons were born—Junius Brutus Booth the second; Edward Booth, who was destined to eclipse his father's fame; and John Wilkes Booth, the assassin, now aged twenty-six. When the father died in 1852, the brothers played his roles, especially in Shakespeare, all over the country, joining forces in the winter of 1864 in a memorable performance of *Julius Cæsar* in New York.

It was remembered now that John Wilkes Booth's playing of Macbeth was distinguished by a leap of at least twelve feet on to the stage when he confronted the witches—unkind critics had even derided him as "the gymnastic actor"—and that he had spent his childhood in the South and was outspoken in his sympathy for its cause, even to the extent of throwing up an engagement in a Virginian theatre to take part in the capture and execution of John Brown six years previously. The handsome young man's photograph stood in all book-shops, where it had been eagerly sought by impressionable ladies. The remaining copies were now commandeered by the War Department and given to the troops sent in pursuit of him.

These discovered that, after the murder, he had ridden at full speed to the Navy Yard bridge which crossed the Potomac river on the way South. There he was challenged by the sentries, to whom he told his name and asked to be allowed to make his way home to Charles County on the Maryland side of the river. They let him pass. A few minutes later another rider appeared, a slender young man with weak features and long, dark hair. "He said his name was Smith," one of the sentries afterwards testified, "and that he was going home. I asked him how it was that he was out so late. He made use of a rather indelicate expression, and said he had been in bad company." Scarcely had he crossed when a third man rode up, complaining that one of the others had stolen a horse from him. The sentries, with that flair for misjudgment which seems inseparable from the military profession, refused to allow him to cross. As it turned out, the first man to follow Booth was one of his fellow-

plotter's, a druggist's clerk named David Herold, while the other, a livery-stable keeper, might have caught them and saved the troops a long and tedious search.

Temporarily safe, Booth and Herold pressed on for ten miles to a hamlet called Surrattsville, where they stopped a few minutes outside a tavern managed by a drunken fellow named Lloyd for a Mrs. Mary Surratt, who kept a boarding-house in Washington. They picked up there some articles waiting for them, including a spy-glass, a carbine and two bottles of whisky. Booth refused to take a carbine on account of the pain he was suffering from his broken leg. After Herold had told the befuddled manager that they had assassinated the President, they rode away and, some fifteen miles farther on, turned off the main road to the secluded house of Dr. Samuel Mudd. Herold lifted Booth off his horse; the doctor set his leg and ordered a negro servant to make a crutch, while the actor rested in the house till the afternoon. Then he shaved off his moustache, and the two fugitives disappeared across a swamp behind the doctor's farm. Dr. Mudd, it may be said at this point, was a sympathizer with the South who, like Mrs. Surratt, had grown increasingly hostile to the Union Government after his slaves were freed by Lincoln's emancipatory decree. He was considered a kindly and moderate man; if, as was alleged, he had once shot a slave, we may be sure that he did so like a chivalrous Southern gentleman and bore the negro no malice.

In Washington meanwhile an officer of the War Department recalled that one of his clerks, Louis Wiechmann, had spoken to him some weeks before of his suspicions about a conspiracy to kidnap Lincoln, in which Booth, Mrs. Surratt's son John, and others of his acquaintance seemed to him to be implicated. Wiechmann lodged in Mrs. Surratt's Washington boarding-house, sharing a room, and sometimes a bed, with her son. The officer had dismissed these suspicions as absurd but, now remembering the incident, he sent Wiechmann to the Secretary for War. As a result Secretary Stanton gave orders for the arrest of Mrs. Surratt and all her household. They were taken in charge on the evening of the 17th, three nights after the murder. John Surratt, however, had left Washington the previous day for the North and soon disappeared across the Canadian border. As the prisoners were being taken away a dishevelled man in dirty clothes, wearing a piece of woollen material instead of a hat, came to the door. Asked his business, he produced a shovel and said that Mrs. Surratt had hired him to dig a drain for her next morning. She was questioned and, according to one of the officers (but not the others), she raised

her right hand in the air and said solemnly, "Before God, I do not know this man, and have never seen him. I did not hire him to dig a gutter for me." He was arrested and identified as the assailant of Seward and his family.

His name was Lewis Payne, or Powell, the twenty-year-old son of an Alabaman clergyman. He had served and been wounded in the Confederate army, in which service also both his brothers had been killed. Booth had met him in Baltimore earlier in the year and invited him to Washington, where he lodged once or twice at Mrs. Surratt's house and shocked Wiechmann by wearing a false moustache and playing with a bowie-knife. It appeared that, after assaulting the Sewards, he tried in vain to find Herold, who had ridden to their house with him but gone away; becoming panic-stricken. Payne let his horse go and took to the woods until, lonely and hungry, he decided to return to Mrs. Surratt's house at this inconvenient moment.

Three more important arrests were made on the same day. Michael O'Laughlin and Sam Arnold, schoolfriends of Booth, were captured in Baltimore and Fortress Monroe respectively. The former was recognized as the man who had shown so much interest in General Grant's movements in Washington, while the latter was the writer of a letter found in Booth's trunk. The third arrest was that of Edward Spangler, a red-headed scene-shifter at Ford's Theatre, who was suspected of assisting Booth to escape through the stage-door. Search was made also for a German coachbuilder and painter from Port Tobacco (a township on the Potomac) named Atzerodt or Attwood; he was supposed to have been given the task of murdering Vice President Johnson.

Secretary Stanton spurred on his detectives with this proclamation:

The murderer of our late beloved President, Abraham Lincoln, is still at large. Fifty thousand dollars reward will be paid by this department for his apprehension, in addition to any rewards offered by municipal authorities or State executives. Twenty-five thousand dollars reward will be paid for the apprehension of G. A. Atzerodt, sometimes called "Port Tobacco," one of Booth's accomplices. Twenty-five thousand dollars reward will be paid for the apprehension of David E. Herold, another of Booth's accomplices. Liberal rewards will be paid for any information that shall conduce to the arrest of either of the above-named criminals or their accomplices. All persons harbouring or screening the said persons, or either of

them, or aiding or assisting their concealment or escape, will be treated as accomplices in the murder of the President and the attempted assassination of the Secretary of State, and shall be subject to trial before a Military Commission, and to the punishment of death.

Let the stain of innocent blood be removed from the land by the arrest and punishment of the murderers. All good citizens are exhorted to aid public justice on this occasion. Every man should consider his own conscience charged with this solemn duty, and rest neither day nor night until it be accomplished.

Thus alternately threatened and encouraged, the good citizens of the North (as well as others not so good, like Lloyd, the tipsy innkeeper) promptly told all they knew or could invent about the conspiracy. Atzerodt was arrested some twenty miles from the capital and identified by Wiechmann as a crony of Booth and by others as the suspicious man who had taken a room in the hotel where the Vice-President was staying. News began also to come in about Booth and Herold. Dr. Mudd was arrested and, after some prevarication, admitted that he set Booth's leg. Then it was learned that the two fugitives had found shelter with a Confederate sympathizer a few miles along the road, resting for a week in a pine wood near his farm. He had rowed them across the Potomac when the search grew too warm, Booth crying, "I'm safe in glorious old Virginia, thank God," as he painfully dragged himself up the Southern bank.

He was too confident. Though none would willingly have betrayed him, many Virginians were too much scared by the victory of the North and the severity of the War Department's threats to do more than offer passive aid to Booth and his comrade. The actor took their attitude bitterly to heart—he sent a reproachful letter, enclosing a five-dollar bill in contemptuous payment, to one Virginian who had given them food but refused them shelter—and, with his leg swollen, septic and excruciatingly painful, pushed on southwards. Travelling in a wagon, he and Herold came to Port Conway, where a ferry crossed the Rappahannock. They met three Confederate officers who, having surrendered and given their parole to the Union army, were making their way home. Herold asked their help. "We are the assassins of Lincoln," he told them and, pointing to Booth lying in the wagon, repeated, "Yonder is J. Wilkes Booth, the man who killed Lincoln." Herold was too big a fool to realize that this was no longer a passport to safety.

The officers, however, took them to a tobacco-farmer named Garratt on the road to Bowling Green, by whom they were

given food and shelter. Booth played with the old man's grandchildren and, telling them to give him a map, hopefully traced a route to Mexico on it. He did not know that Federal troops were already searching out the men who had befriended him at the ferry. One of these was caught at Bowling Green and forced at a pistol's end to disclose where the fugitives were hiding. (The girl to whom this man was engaged never spoke to him again, and he was ostracized by everybody in the South until his death.) Arriving at Garratt's farm at two o'clock in the morning of 26th April, the troops surrounded the place and ordered the owner to give up Booth and Herold. When Garratt declared that they had taken to the woods, the officer in charge threatened to hang him and would have done so had not one of his sons led the soldiers to a barn, or tobacco warehouse, in which the two fugitives were sleeping. The young Garratt was sent inside to summon them to surrender.

Booth drove him out with Herold's carbine, calling to the soldiers, "Who are you? What do you want?" Their officer replied, "We want you, and we know who you are. Give up your arms and come out."

"Let us have a little time to consider it," said Booth. After a few minutes of silence, he again asked who they were. "This is a hard case," he told them; "it may be I am to be taken by my friends." But, when it was clear that they were certainly not his friends, he challenged the officer to draw his men off a hundred yards or even fifty, so that, though a cripple, he could come out and fight them. "Give me a chance for my life," he pleaded. On the officer's refusal, Booth assumed his most melodramatic tones and cried, "Well, my brave boys, prepare a stretcher for me," adding by one account, "One more stain on the glorious old banner!"

The soldiers decided to smoke him out, and young Garratt was made to pile pine boughs against the wall of the barn. Then Booth shouted, "There's a man in here who wants to come out. He had nothing to do with it." The officer told Herold to surrender and bring his carbine with him, and the two men's voices were heard in dispute. Booth is reported to have said to Herold, "You damned coward, will you leave me now? Go! Go! I would not have you stay with me." But it is much more probable that he hoped to save the youth's life by sending him out, and that the report is an invention. Be that as it may, Herold came out empty-handed and was arrested.

The officer set fire to some rubbish beside the barn, and Booth was seen by the light of the flames with a revolver in his hand. Then there was a shot, and he fell with a bullet in his

neck. Either he shot himself or, what is just as likely, one of the soldiers, a Massachusetts man named Corbett, had fired against his officer's orders. (Corbett became a popular hero in the North, received a share in the reward offered for apprehending Booth and, after a triumphal tour, was appointed doorkeeper to the Kansas House of Representatives. This appointment terminated abruptly one day when he tried to shoot some members of the House and was found to be a homicidal maniac.) Booth was dragged out of the burning barn, murmuring, "Tell mother I die for my country." He recovered consciousness a little later and begged the soldiers to put him out of his pain. A few hours afterwards he died, as he must in any event soon have done from his gangrened leg.

A diary, found in his pocket, showed his distress and indignation at the Virginians' reception of him. "I am here in despair," he wrote, "and why? For doing what Brutus was honoured for, what made Tell a hero . . . I struck for my country and that alone, a country that groaned under *his* tyranny and prayed for this end; and yet behold the cold hand they extend to me." It appeared also that, before going to the theatre to kill Lincoln, he had left a letter with another actor explaining his motives, but his friend, instead of fulfilling his promise to hand it to the newspapers, destroyed it. Booth imagined that the Government had suppressed it: "The little, the very little I left behind to clear my name, the Government will not allow to be printed." And he added miserably, "I am abandoned with the curse of Cain upon me when, if the world knew my heart, that one blow would have made me great."

His corpse was taken to Washington, identified and buried secretly in an old prison to prevent its falling into the hands of rebel fanatics. Herold was placed with the other prisoners in an old hulk moored off the Navy Yard; then they were all transferred to a disused penitentiary on Greenleaf's Point to await trial.

With Booth's death and his companion's arrest, the authorities had now accounted for all the people who appeared to be directly implicated in the conspiracy, except John Surratt. But the excessive zeal of Andrew Johnson and of Secretary Stanton and the frenzied anger of the victorious North were not satisfied with this; they sought also to fasten the guilt of the crime on the vanquished South, in the person of its President and his agents in Canada. With Lincoln dead, the little men had come into power. Thus, on 1st May Johnson issued a proclamation which began with the words: "It appears, from evidence in the Bureau of Military Justice, that the atrocious murderer of the

late President, Abraham Lincoln, and the attempted assassination of the Hon. William H. Seward, Secretary of State, were incited, concerted and procured by and between Jefferson Davis [the Confederate President], late of Richmond, Virginia, and Jacob Thompson [a pre-War Secretary for the Interior], Clement C. Clay [a former Alabaman senator], Beverly Tucker, George N. Saunders [formerly Navy Agent in New York], William C. Cleary [Clay's secretary] and other rebels and traitors against the Government of the United States, harboured in Canada." He went on to offer a hundred thousand dollars reward for the arrest of Davis, twenty-five thousand dollars for each of four of the others, and ten thousand each for the last two. As Jefferson Davis still commanded the shattered forces of the South, there was no immediate prospect of the first reward's being earned, while the Canadian authorities were likely to require more substantial evidence of the others' complicity than the Bureau of Military Justice possessed, before any question of extraditing them could be considered. When Davis was surprised and taken prisoner in Georgia on 10th May and a copy of the proclamation reached his captors, it was too late to bring him to trial with the other prisoners. Their ordeal began on 9th May before a Military Commission, sitting in the prison where they were confined.

This Commission consisted of nine Army officers of high rank, with three Judge-Advocates who might be said to act both as prosecutors and judges. Their double position seems to have given them a dominant influence over their military colleagues, and the prisoners at no stage received the protection to which they would have been entitled from a properly constituted civil tribunal. They started also with other handicaps: they were not to be allowed to give evidence on their own behalf, and, apart from the effects of their severe confinement in the prison, from which at least one of them was suffering in health, they were brought into the dock in chains. Mrs. Surratt's ankles were fettered; all the male prisoners were chained by both ankles and wrists, while Payne and Atzerodt had large iron balls attached to their fetters which made it impossible for them to move without assistance. There can have been no need for such precautions.

After a first formal appearance, the prisoners were allowed to nominate counsel and ordered to plead to an indictment which, besides the general charge of conspiracy with each other, Jefferson Davis and his agents between 6th March and 14th April to murder the President and his colleagues, set out particular accusations against each of them except Sam Arnold.

Thus Mrs. Surratt was charged with harbouring the conspirators before and after the outrage; Herold and Dr. Mudd with aiding Booth to escape; Payne with the attack on Secretary Seward's household; Atzerodt with lying in wait for Vice-President Johnson; O'Laughlin with lying in wait for General Grant; and Spangler with assisting Booth to enter Lincoln's box and to escape. Six stenographers, headed by Benn Pitman, a brother of the founder of modern shorthand, were sworn in as official reporters.

On 12th May, exactly four weeks after the assassination, the real business of the trial began. The prisoners, pleading not guilty to all the charges, demanded a trial by the civil courts which were in general operation elsewhere, insisting that they were not amenable to military jurisdiction; they also asked for separate trials. Both demands were refused, and the prosecution was told to call its first witnesses.

The trial lasted for seven weeks and was exceptionally complicated. More than three hundred witnesses were called, many of whom made two appearances. The final collapse of the Southern armies during the proceedings permitted fresh testimony to be introduced at a late stage which would have been more suitably heard at the beginning. The prosecution case covered a huge amount of ground, since it sought to prove the guilt not only of the eight prisoners but also of John Surratt, who had escaped, and of Jefferson Davis and other Southern leaders, who were not available; and the idiosyncrasies and lack of legal training of several of the judges helped to confuse and protract the issues. For these reasons it would be a waste of effort to attempt a chronological description of the trial, and it will be more convenient to consider the proceedings as they fall into certain more or less separate divisions, beginning with the main conspiracy charge and then examining the accusations against the various individuals.

The chief evidence adduced to show that the assassination was the result of an officially sponsored Confederate plot, was given by a handful of secret agents who claimed to have won the confidence of the Confederate leaders at Richmond and in Canada. They stated that Booth, John Surratt and Payne had all visited Canada and conferred with the Southern representatives there. The first of these witnesses, Richard Montgomery, declared that he had discussed the possibility of murdering Lincoln with Jacob Thompson and the others in Toronto and Montreal, that these all favoured the scheme and looked to Booth to carry it out, but that they had wished to secure Jefferson Davis's approval before taking final steps. The impli-

cation of this evidence was that Davis must have approved the plot for it to have been carried out, but Montgomery was not in a position to produce any sort of direct evidence for this assumption.

Another secret agent, Sanford Conover, said that, while he was in Canada discussing the plot with Thompson, a despatch arrived from Richmond and "also a letter, I think in cypher, from Mr. Davis," which, he was given to understand, contained the assent of the Confederate Government to the enterprise: "Mr. Lincoln, Mr. Johnson, the Secretary of War, the Secretary of State, Judge Chase and General Grant were to be victims of this plot." Jacob Thompson, added this witness, told him that their removal from office could not be regarded as murder, "since the killing of a tyrant was no murder." According to Conover, "the conspiracy was talked of at that time as commonly as one would speak of the weather."

He also described a Confederate scheme to introduce disease into the North by sending bundles of infected clothes from the West Indies for sale by public auction, and by poisoning the New York reservoirs; this plot too, he said, was encouraged by the Confederate Government and agents. Conover, by the way, after giving his evidence—which, he was told, would not be publicly reported—returned to Canada to gather, or invent, fresh information for the Union Government. Unfortunately for him, the New York newspapers printed some of his testimony and, to save himself, he at once published a statement in Montreal that "the said Sanford Conover evidently personated me before the said Court-Martial . . . and, in fine, I have no hesitation in stating that the evidence of the said Sanford Conover personating me is false, untrue and unfounded in fact, and is from beginning to end a tissue of falsehoods." To accentuate this denial, he advertised a reward of five hundred dollars "for the arrest, so that I can bring to punishment in Canada or elsewhere, the infamous and perjured scoundrel who recently personated me under the name of Sanford Conover and deposed a tissue of falsehoods before the Military Commission at Washington." Having thus threatened himself with the rigours of the law, he went back to Washington and, again appearing before the Commission, explained that he had been forced to play this comedy because the infuriated Southerners in Canada threatened to kill him for exposing their plots.

A third witness, Dr. James Merritt, who claimed—falsely, as it afterwards appeared—neither to desire nor to have received pay for spying on the Confederates in Canada, stated that an

assassination plot had been openly discussed by them for some time, with Booth, Surratt, Herold and Atzerodt named as intending participants. In February, he said, the Confederate agents received a letter from Jefferson Davis which "expressed his approbation of whatever measures they might take" to destroy Lincoln's tyranny. One of the Confederate leaders, he added, told him in Toronto a week before the assassination that "they were going to the States and were going to kick up the damndest row that had ever been heard of. . . . He said if I did not hear of the death of Old Abe and of the Vice-President . . . in less than ten days, I might put him down as a damned fool."

The prosecution sought also to connect Jefferson Davis with the crime by more direct links. A cypher found in Booth's trunk was declared to be identical with one discovered in the Confederate offices in Richmond. A letter was produced from the captured Confederate archives in the same city; addressed to Jefferson Davis, it outlined a plan for injuring the North by burning its town and shipping and asked the recipient to send for a certain General Harris who would show that the plan was feasible. Davis had endorsed the letter with the words: "Secretary of State, at his convenience, please see General Harris and learn what plan he has for overcoming the difficulty heretofore experienced." Another letter to Davis from the same archives contained an offer "to rid my country of some of her deadliest enemies by striking at the very heart's blood of those who seek to enchain her in slavery"; this was endorsed by Davis's secretary, "Respectfully referred, by direction of the President, to the Honourable Secretary for War," but no proof was offered that Davis had either read or approved it.

Then a witness named Edward Frazier told the Commission that he had personally discussed with Jefferson Davis in the previous year the possibility of destroying bridges and steamboats in the Union's possession. His evidence, however, was far from compromising Davis in any improper actions because, as Frazier said, "I told Mr. Davis that I did not think it was any use burning steamboats, and he said no, he was going to have that stopped. . . . I asked Mr. Davis if it would make any difference where the work of destroying bridges was done. He said it did not; it might be done in Illinois or any place; that we might destroy railroad bridges, commissary and quartermaster stores—*anything appertaining to the Army.*" And Lewis F. Bates deposed that Davis was making a speech from the steps of his (the witness's) house in North Carolina when he received a telegram containing the news of Lincoln's assassination. At

the end of the speech, the witness said, Davis read out the telegram and commented, "If it were to be done, it were better it were well done." No corroboration was offered for this improbable story.

So ignorant of legal procedure were the worthy officers who composed the bulk of the Commission that they now permitted the prosecution to bring forward a great deal of evidence which had no bearing at all on the guilt of either the accused or the Confederate leaders, such as accusations that the Confederates had ill-treated prisoners of war. Then an Alabaman newspaper was put in which had published this advertisement in the previous December:

ONE MILLION DOLLARS WANTED TO HAVE PEACE BY 1st MARCH.—If the citizens of the Southern Confederacy will furnish me with the cash, or good securities for the sum of one million dollars, I will cause the lives of Abraham Lincoln, Wm. H. Seward, and Andrew Johnson to be taken by 1st March next. This will give us peace, and satisfy the world that cruel tyrants cannot live in a "land of liberty." If this is not accomplished, nothing will be claimed beyond the sum of fifty thousand dollars in advance, which is supposed to be necessary to reach and slaughter the three villains. I will give, myself, one thousand dollars towards this patriotic purpose. Everyone wishing to contribute will address Box X, Cahawba, Alabama.

It appeared that this periodical had a circulation of only a few hundred copies, though, as the prosecution gravely stated, it exchanged with most of the Richmond newspapers; and no evidence was produced to show that the advertiser, a local judge, represented anybody but himself or, for that matter, had received any answers to his advertisement.

Samuel F. Jones testified that, living in Richmond during part of the war, he had often heard officers and men of the Confederate army discuss plots against Lincoln: "I have heard rebel officers . . . say they would like to see him brought there, dead or alive, and they thought it could be done. I heard a citizen make the remark that he would give from his private purse ten thousand dollars, in addition to the Confederate amount offered, to have the President of the United States assassinated and brought to Richmond, dead or alive." This witness added that he "judged" from what he had heard that the Confederate Government had offered a reward for Lincoln's assassination. (In this he judged wrong; no such reward was ever offered or contemplated.)

Then a German immigrant, Henry von Steinacker, who described himself as having been an engineer officer on the staff of the Confederate General Edward Johnson, stated that Booth had told him two years previously that "Old Abe Lincoln must go up the spout." He testified also to the existence of a network of secret societies in the Confederate army and especially in his own regiment, the Second Virginia Regiment, with such names as the "Golden Circle" and the "Sons of Liberty"; their purpose was to send agents on "detached service" to burn Northern cities, release Confederate prisoners and assassinate Union leaders. The way in which Steinacker and others gave their evidence may be gathered from a portion of his examination by the Judge-Advocate:

"State whether during the last year or two, since the reverses of the Confederacy have commenced, it has not been freely and frequently spoken of in the rebel service as an object finally to be accomplished—the assassination of the President of the United States."

"Yes, sir."

"Have you not heard it spoken of freely in the streets of Richmond, among those connected with the rebel Government?"

"Yes, sir."

"Whenever and wherever spoken of, do I understand you to say that this sentiment of the necessity of the assassination of the President of the United States was generally assented to in the service?"

"Yes, sir."

The counsel for the defence had not hitherto cross-examined these witnesses very closely or even sought with any vigour to rebut their evidence, presumably because it was so remote from any connection with their clients. But Steinacker was too vulnerable to be passed over, and three former Confederate officers were brought to the court to discredit him. The first of them was General Edward Johnson, now a prisoner of war, on whose staff Steinacker claimed to have served.

The appearance of General Johnson, however, produced a remarkable outburst from two of the judges, which shows the atmosphere in which the trial was conducted. General Howe rose in his place and protested against being asked to listen to the evidence of a Confederate officer: the witness, he said, had before the war been a member of the United States Army and taken the oath of allegiance and fidelity to the Government, but he "comes here with his hands red with the blood of his loyal countrymen, shed by him or by his assistants in violation of

his solemn oath as a man and of his faith as an officer." Therefore, said the punctilious judge, "I submit that he stands in the eye of the law as an incompetent witness because he is notoriously infamous." Another member of the tribunal, General Ekin, seconded his colleague's motion that the witness should not be heard. He said he regarded General Johnson's willingness to testify as "the height of impertinence," and trusted that General Howe's objection to hearing him would be sustained by the rest of the Commission.

This was too much even for the Judge-Advocates. After one of the defence counsel had pointed out that the prosecution had called ex-Confederate witnesses to support its case and no objection had been made to them by the fire-eating members of the Commission, the senior Judge-Advocate intervened to point out that General Johnson's right to give evidence could not be disputed, though of course, he added, the fact that the witness had served in the Confederate forces might affect the judge's opinion of his credibility.

General Johnson was then permitted to testify. He at once destroyed Steinacker's credit by revealing that the latter—who, incidentally, had first deserted from the North to the South and was now trying to creep back to the winning side—had never been an engineer officer and had never served on his staff except as an orderly. The General went on to deny that the Second Virginia Regiment had held a meeting to consider a plot to assassinate Lincoln or that any such secret societies existed as the "Golden Circle" or the "Sons of Liberty." Two other officers from this regiment made similar statements, repudiating Steinacker's story.

Finally, to round off the general conspiracy charge in the indictment, some letters were put in as evidence. One of them, which had been picked up in a street-car by a New York woman in the previous November, contained the words, "The time has at last come that we have all so wished for, and upon you everything depends. As it was decided before you left, we were to cast lots. Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback—*Abe must die, and now.* You can choose your weapons. The cup, the *knife*, the *bullet*. . . . You know where to find your friends."

Another letter, addressed to Booth by his initials and found at his hotel, referred to a subscription that was being raised for an "oil speculation," and advised Booth how to escape "after you *strike ile*," the writer promising to "keep you safe from

all hardships for a year." A peculiarity of this letter was that it referred bitterly to a certain "infernial Purdy" who, the writer said, had kept him under surveillance but had been checked by the bringing of a false charge of immorality. The "infernial Purdy" gave evidence; he proved to be a Government agent who had recently been charged with an offence against a girl. He was obliged to admit in cross-examination that he had been accused of writing the letter himself in order to try to explain away his moral lapse and to ingratiate himself with his superiors. From the fantastic nature of the letter, this accusation seems highly probable.

Yet another letter had been found floating in some water in North Carolina. Purporting to be signed by "Number Five," it informed an untraceable John W. Wise that "I am happy to inform you that [Booth] has done his work well. He is safe, and Old Abe is in Hell. Now, sir, all eyes are on you. . . . *John* must come. Old Crook has him in charge. . . . We had a large meeting last night. . . . We receive great encouragement from all quarters." No particle of evidence was produced to show by whom or to whom the letter was written, or how it came to float so miraculously into the prosecution's hands. It was almost certainly a forgery, like at least one other of the letters produced. Such was the meagre evidence on which the charge of conspiracy against Jefferson Davis and his colleagues was based, and it is time now to turn to the case presented directly against Booth, John Surratt, and the eight people in the dock.

The prosecution, basing its case on statements and confessions made by some of the prisoners, on Booth's diary, which, however, was not produced in court—probably because it would have shown that the Confederate leaders had no part in the plot—and on the evidence of Wiechmann, Mrs. Surratt's lodger, of Lloyd, her drunken manager at Surrattsville, and of other witnesses, insisted that a conspiracy had existed for some time. In the earlier stages, its purpose had been to kidnap Lincoln and carry him South; his assassination was a later development of the plot. Booth had inspired it throughout, with John Surratt as his chief assistant.

A first kidnapping attempt had been timed for January, when it was supposed that Lincoln would visit Ford's Theatre. Booth intended to cut off the lights, capture the President in his box, drop him on the stage, carry him away in a carriage and, after hiding him for a time, take him to Port Tobacco, where Atzerodt would ferry the party across the Potomac into Virginia. An actor named Chester, who had played in *Julius Cæsar* with Booth and his brothers that winter, testified that

Booth invited him to enter the "speculation." Chester's task would have been to keep the passage to the stage-door open for the conspirators and their captive, but he refused to participate in the plot. It seems almost incredible that the conspirators can ever have expected to kidnap the President in this manner, but they apparently did so for a time. A more hopeful opportunity, however, to kidnap Lincoln presented itself in March, when he intended to visit the outskirts of Washington. Booth and the others made their preparations to stop his carriage, seize him and carry him South, but bad weather made the President postpone his expedition. The conspirators separated, imagining that their plan had been betrayed; Sam Arnold returned to Baltimore and refused to take any further part in the conspiracy until Booth should consult the Confederate leaders in Richmond and ascertain if they favoured the proposal to kidnap Lincoln.

Reliable evidence showed that, instead of his going to Richmond, Booth now began to plan the murder of the President and his colleagues. Chester, the actor, stated that Booth said to him a week before the assassination, "What an excellent chance I had to kill the President, if I had wished, on Inauguration Day! I was on the stand as close to him nearly as I am to you." One of the conspirators' meeting-places was Mrs. Surratt's boarding-house, while carbines, whisky and a spy-glass were stored at her tavern at Surrattsville to be picked up after the crime. Not only did Booth undertake to kill Lincoln, but Atzerodt was given the task of killing Johnson, Payne and Herold of killing Seward, and O'Laughlin of killing General Grant. The conspiracy came very near to complete success. The prosecution pointed out that, in all probability, only Grant's absence saved his life, while, had Atzerodt not lost courage at the last minute and had Payne's thrusts gone home, the Vice-President and the Secretary of State would have joined their leader in death. Booth might never have been caught, had he not broken his leg in jumping from the box and, but for Wiechmann's suspicions, the other conspirators might have gone scot-free.

As things were, however, the guilt of at least three of the prisoners was certain. Herold's flight with Booth made any serious defence of him impossible. All that his counsel could urge was his exceptional childishness and impressionability, which had made him an easy prey to Booth's arguments; a doctor, called to give evidence on his behalf, described him as "a very light, trivial, unreliable boy, so much so that I would never let him put up a prescription of mine if I could prevent

son was serving with the Confederate forces. Also she was a Roman Catholic—as was her fellow-prisoner, Dr. Mudd—and members of this Church were unpopular in Washington at the period.

Sam Arnold was certainly innocent of any share in the plot to murder Lincoln. Once the kidnapping plot was abandoned, he took no further part in Booth's conspiracy and was not even in Washington at the time. O'Laughlin, though he was in the city on the night of the assassination, produced several witnesses to prove that he was in their company when the prosecution alleged that he was shadowing General Grant.

The case against Dr. Mudd was more complicated. It was shown that Booth had met him and visited his house some time before the crime, either to interest him in the conspiracy or, as the doctor stated, to discuss a purchase of land. The indefatigable Wiechmann testified to a further meeting between Dr. Mudd and Booth in January in Washington, and another witness to a still later meeting at the beginning of March. The prosecution laid stress on Booth's visit to the doctor's house during his escape, and suggested that Dr. Mudd's claim not to recognize the assassin could not be squared with their previous acquaintance. A mass of evidence was produced about Dr. Mudd's behaviour after the departure of the fugitives, his political opinions, and his treatment of slaves and servants; but its general effect confirms the statement of one witness that most of the people living in the doctor's part of the country were addicted to perjury at the least provocation. Maryland, after all, was a borderline State between the North and South: what with Union sympathizers who had become disaffected through the loss of their slaves, and former Confederates who were anxious to demonstrate their new loyalty to the victorious government—and, if possible, to share in some of its rewards—no surprise need be felt that the local evidence was so contradictory.

The case against Ned Spangler, the scene-shifter, was weakest of all. He was known to be a great admirer of Booth; but so was everybody else in the theatre. Spangler, when helping to prepare the box for the President's visit, had indiscreetly said, "Damn the President and General Grant!" explaining that he damned them for causing so many deaths in the war. The prosecution alleged that he took this opportunity to fix the wedge which afterwards jammed the door; but it is at least as probable that Booth did this. It was stated that, when Booth arrived at the stage-door of the theatre that evening, he called to Spangler to hold his horse, adding, "Ned, you'll help me all you can, won't

you?" to which Spangler was supposed to have answered, "Oh, yes." He then sent a man out to hold Booth's horse, though this was not in itself suspicious. Much more serious was the evidence of another stage-hand who said that, being the first man to see which way Booth escaped and running back to the stage to reveal it, he was struck across the mouth by Spangler and told to keep his mouth shut. The negro too who had held Booth's horse deposed that Spangler warned him to say nothing. An attempt was made to identify Spangler with a black-moustached man who was seen talking to Booth in front of the theatre just before the crime, but as the stage-hand had red hair and was proved to be on the stage throughout the performance, this identification was patently false. A rope found in his trunk was stated by the prosecution to be intended for use in kidnapping Lincoln; Spangler's counsel called witnesses, however, to suggest that he had taken it from the theatre for his favourite recreation of crab-fishing.

This summarizes the evidence against the various prisoners. It took over a month to present, and then the lawyers addressed the Commission on behalf of their clients. When they ended, one of the Judge-Advocates closed for the prosecution. In his speech he cleverly reconstructed the alleged conspiracy, using every morsel of evidence against the prisoners and against Jefferson Davis and the other Confederate leaders. On 29th June the Commission, including the three Judge-Advocates, met behind closed doors to consider their verdicts.

These were published next day. Mrs. Surratt, Payne, Herold and Atzerodt were found guilty of all the charges brought against them, and were sentenced to death. O'Laughlin was found guilty of the general conspiracy charge but not of the specific count of lying in wait for General Grant; he was sentenced to life imprisonment, as were also Sam Arnold and Dr. Mudd. Spangler, found not guilty of conspiracy but guilty of aiding Booth to escape, was given a sentence of six years' imprisonment.

It soon became known that the Commission had found difficulty in deciding on Mrs. Surratt's guilt and that only the votes of the prosecuting Judge-Advocates had provided the necessary majority against her. Six of the judges signed a petition to Andrew Johnson to commute her sentence to imprisonment, but the new President refused to show mercy. An attempt was made by her counsel to obtain a writ of Habeas Corpus on the ground that the Military Commission had no legal authority to try her; this application too was dismissed by Johnson. On 7th July, a week after sentence was

passed on them, Mrs. Surratt, Herold, Payne and Atzerodt were hanged together in the courtyard of their prison. Dr. Mudd, Arnold, O'Laughlin and Spangler were despatched to the Tortugas, off the coast of Florida, to serve their terms of imprisonment.

The findings of the Commission meant, among other things, that the judges believed Jefferson Davis and the Confederates in Canada to be implicated in the conspiracy. It is hardly necessary to point out that the evidence against these absent defendants was worthless. Even if Sanford Conover and the others could be believed—and only very stupid and biased judges were likely to believe them—they did not show any serious connection between the Confederate leaders and the prisoners. Nor was Jefferson Davis (who, by the way, denied having said of Lincoln's death, "If it were done, it were better it were well done") or any of the others ever tried for their supposed share in the crime. On the other hand, Sanford Conover soon went to jail for ten years for perjury, and might well have been accompanied by several others of the secret agents who gave evidence.

There can, of course, be no doubt about the justice of Herold's, Payne's and Atzerodt's fate. The sentences on O'Laughlin and Arnold were severe, but, even if they did not participate in the final stages of the conspiracy, they had favoured the earlier kidnapping plan. Spangler's folly in trying to help Booth after the crime deserved the punishment he received. About Dr. Mudd, however, it is difficult to speak with any certainty. If he was rightly identified as Booth's companion on several previous occasions, his failure to hand over the assassin to the pursuing troops can only be regarded as criminal. If, on the other hand, his story was true and he barely knew Booth, it is just possible that he did not recognize him. On the whole, after wading through all the evidence on this point, I am inclined to think that Dr. Mudd, while ignorant of the conspiracy to murder the President, was justly found guilty of aiding the murderer to escape.

Mrs. Surratt's case enters a different category. Whatever her private sympathies, whatever the guilt of her son, the evidence against her was far too weak to justify a capital sentence. She may or she may not have known what was going on, but the testimony against her was tainted and unconvincing. Her son, however, was more lucky. After being concealed for some months in Canada by Catholic priests, he escaped to Europe and took service in the Papal Zouaves. He was recognized by a former acquaintance and arrested, but escaped by jumping over

a cliff and made his way to Egypt, where he was arrested again. Brought back to America after some delay, he was put on trial before a civil court in June, 1867; after two months the jury disagreed, with a majority for acquittal. It is noteworthy that Booth's diary, which had been suppressed at the original trial by Secretary Stanton, probably with Andrew Johnson's connivance, was now produced and showed that Booth was the sole originator and leader of the conspiracy. John Surratt was released after a year's detention; he probably owed his good fortune to the reaction of popular feeling against his mother's cruel sentence.

O'Laughlin died in 1867 in an epidemic of yellow fever in the penal settlement, during which Dr. Mudd showed exemplary courage and devotion in tending his fellow-prisoners. The doctor himself fell ill and was saved only by Spangler's care. They and Arnold were released in 1869, after only four years' imprisonment, and Spangler and the doctor settled down together in the latter's house, regarded by their Southern neighbours not as convicted criminals but as the victims of Northern injustice.

There is no need here to discuss at any length the political consequences of Abraham Lincoln's assassination. The brutality of the crime could not be excused by its results, for, as Jefferson Davis remarked when he was charged with participation in it, Andrew Johnson was far more obnoxious to Southern opinion than his predecessor. The first action of the Cabinet at Washington after Lincoln's death was to reverse his policy and decide on a repressive attitude towards the beaten South. All his humanity, common-sense and foresight were thrown overboard, and the presidencies of Andrew Johnson and General Grant were disgraced by the intemperate and vicious brutalities of carpet-bagging Reconstruction. The death of Lincoln was the worst blow that the South ever suffered, and to this day she has not wholly recovered from its effects.

A word, however, may be added about a legend concerning John Wilkes Booth which has often reappeared in the past eighty years, that he escaped death in the barn at Bowling Green. That somebody was killed there is not denied, but the legend pretends that this was a tramp who was shot in mistake for the actor. The secrecy with which Booth's body was carried to Washington and buried there has helped to create an impression that it was never properly identified. Pretenders came forward in various parts of the South at various times to claim the sensational mantle of Lincoln's assassin, and even the mummy of one of these was for a long time exhibited at country

fairs, complete with a fracture of the left leg. The story is ridiculous. In the first place the body was identified beyond any reasonable doubt. Secondly, it was identified again a few years later, on its removal from Washington to the Booths' burial-place in Baltimore, when the dead man's dentist satisfied himself by examining fillings in the teeth that the corpse was indeed Booth's. And, finally, even if Booth miraculously escaped from the barn, leaving behind him a man so exactly resembling himself, it must be remembered that the wound in his leg had mortified: the best surgeons of the day might possibly have saved his life but they could not have saved his leg. Yet none of the pretenders was a one-legged man.

MR. WAGGONER AND THE NINETEEN BANKS

BANKERS are not esteemed to-day as they used to be. A generation or so ago one might reasonably suppose that to be a director of one of the big English banks, apart from being proof of gentle birth and athletic distinction at a University, represented also a high degree of financial wisdom. Nobody believes this nowadays. The record of the big bankers between the two wars is an overwhelming example of professional futility. It ought not to be very difficult to make money by borrowing it at 1 per cent and lending it at 5 against adequate security; but the bankers consistently managed to bungle even this operation. They pressed loans on customers in prosperous times and, the moment any cloud appeared in the international sky, demanded immediate repayment regardless of consequences; and, just to prove that they were not insular, they made a practice of giving long-term loans to dubious Central European clients while themselves borrowing at short term from America and France. This rakes' progress culminated with the glorious association of those twin geniuses of finance, Mr. Montagu Norman and Mr. Stanley Baldwin, the results of which are sufficiently notorious. Probably it is due in large part to this fall in prestige that bankers are now regarded with more ridicule than admiration and that, when they are "taken for a ride" by some ingenious swindler, the general public feels more pleasure than pity.

Nor apparently is this sentiment confined to England, for, when Mr. Waggoner, in the manner about to be described, caused the greatest possible discomfiture to a number of big American bankers—he was a banker himself, but only a little one—his countrymen reacted in precisely the same way. They laughed like anything.

On 31st August, 1929, a Saturday—the day of the week is important—six New York banks received telegrams, handed in overnight, from their correspondent banks in Denver, Colorado, requesting them to transfer to the Chase National Bank of New York a sum amounting to half a million dollars, for the credit of the Bank of Telluride. Telluride is a comparatively unimportant mining and cattle-raising township about two hundred miles from Denver, and the crediting of so large a sum to so small a bank might have aroused suspicion but

for two circumstances. First, the total was apportioned in the following manner, so that none of the six New York banks was asked to contribute an unusual sum: the Chemical National Bank and the First National Bank of New York were each asked to transfer \$100,000, while \$75,000 each were demanded from the National City Bank, from the Harriman National Bank, from the Guaranty Trust Company, and from the Equitable Trust; all of these concerns were accustomed to make hundreds of such transfers daily. Secondly, the telegrams were sent in the special code of the American Bankers' Association, which, to prevent misuse, was known only to the heads of banks throughout the United States. The sums were immediately transferred—on paper, of course, and not in currency—to the Chase National Bank; and each of the six banks, ignorant that it was not the only one involved, posted a formal statement to its Denver correspondent.

On this same Saturday morning a man entered the offices of the Chase National Bank and, identifying himself as Mr. Charles Delos Waggoner, president of the Bank of Telluride, inquired if the half-million dollars had been placed there to his concern's credit. Finding that this was the case, he at once produced cheques on the Chase National Bank for \$270,000, signed by his chief cashier at Telluride, which he requested the officials to certify with their seal and signature as being properly secured by the new credits in their possession. Armed with these certified cheques, he then made his way to the Central Hanover Bank of New York, which held a large amount of Bank of Telluride stock as security for various sums—amounting to \$215,000—owed to it by the latter bank, by Mr. Waggoner himself, and by a cattle-raising company of which also he was the president. He handed in the certified cheques in settlement of these debts, and asked that the now unnecessary securities should be posted to him at Telluride. The remaining \$55,000, he said, could remain temporarily on deposit.

Having thus discharged his New York debts and those of the Bank of Telluride and of the cattle company, Mr. Waggoner returned to the Chase National Bank and presented another cheque, also signed by his chief cashier, for \$225,000 and requested payment for it in notes. The officials, however, urged him not to endanger his life by carrying so much currency on his person, and suggested that, instead, they should certify this cheque too and send it for him by post wherever he wished. He agreed, and (in an unlucky moment) asked them to send it to the First National Bank of Pueblo, Colorado, with instructions to distribute the amount thus: \$45,000 were to be used for

paying off odd debts of the Bank of Telluride; a draft for \$30,000 was to be sent to a bank in Salt Lake City for the credit of the Bank of Telluride; one for \$50,000 to a bank in Durango, Colorado, for the same purpose, and one for \$50,000 to a bank at Grand Junction, Colorado, for Mr. Waggoner's private credit; while \$50,000 were to be sent in notes to the Bank of Telluride.

He had thus already withdrawn \$495,000 from the new credit of half a million: only \$5,000 remained, and he told the Chase National Bank to retain this sum on deposit for the Bank of Telluride.

So far there was nothing to indicate to any of the banks concerned that anything was wrong. None of them suspected that there was anything the matter with the affairs of the Bank of Telluride or of its president. A clerk in the Chase National Bank, who thought fit to ask Mr. Waggoner in a friendly way where the credits came from, was satisfied with his jocular reply that they were probably a donation. It appeared later, however, that on receiving the original telegram from Denver Mr. Orlando Harriman, a director of the Harriman National Bank, had cabled to his correspondent there to inquire if everything was in order, and, receiving a somewhat unsatisfactory reply, asked the Chase National Bank not to pay out the \$75,000 which had already been transferred to it from his own office; but, though he offered to indemnify the Chase National Bank against any action for damages that might result from such a refusal to pay, it declined to take the risk of offending a client. So Mr. Waggoner was permitted to pay off his New York debts in the manner described; and, when in the course of the next day or two the Pueblo bank received the certified cheque and his instructions, it at once distributed the sum as he requested. Except Mr. Orlando Harriman, then, everybody concerned was perfectly happy.

Not so the six Denver banks when, reopening on Tuesday, 3rd September, after an officially extended week-end holiday, they found in their mail formal statements from their New York correspondents that sums amounting to half a million dollars had been transferred at their telegraphic request to the Chase National Bank for the credit of the Bank of Telluride. None of the Denver banks had sent such a telegram! If such telegrams had been sent to New York from Denver, as seemed to be the case, they had been sent by somebody without authority. The fact that the instructions had been cabled in the bankers' code only showed that a wrongdoer had obtained access to this. The six Denver banks at once informed the six New York banks of the fraud; the latter informed the Chase National Bank,

and this passed on the story to the Central Hanover Bank and the banks at Pueblo, Salt Lake City, Durango and Grand Junction. Nobody, however, could acquaint Mr. Waggoner with the distressing news, for he had disappeared; though the staffs of all the New York banks combed the hotels for him, he was not to be found.

The horrid rumour spread that some scoundrel had impersonated him, perhaps after killing or kidnapping him; but the clerks at the Central Hanover Bank were certain that they had recognized him. What was more, inquiries at Telluride showed that he had spent some days in Denver in the previous week and left that town for New York on Wednesday, 28th August; he had also cabled from New York on the following Monday that he was about to return home. Representatives of the various banks hastened to Telluride to interview him, but, though days passed, he did not arrive. The banks grew increasingly anxious and began to talk about having him arrested, wherever he was.

But who was to make the first move? None of the banks concerned—they numbered nineteen now, with the six in Denver, eight in New York, and five in other parts of the country—wished to publish the discreditable admission that, apparently, it had been swindled. And, when one came to think of it, what offence had Mr. Waggoner (if it *was* Mr. Waggoner) committed? He could not have sent off the forged telegrams from Denver on the Friday evening, because, apart from being seen to leave that city for New York on the Wednesday, he was only too certainly present in New York on the Saturday morning. Nor had he committed any improper act in New York; in his transactions with the New York banks, he merely used credits, put by them at his disposal, in the most honourable manner for paying off old debts and re-establishing the credit of his bank. It was perhaps odd that he had expected the forged credits to arrive; but perhaps he was a pious man and remembered Elijah's ravens. Anyhow, it was clear that both he and the sender of the telegrams must be found before any official action could be taken to clear up the mess.

Private detectives were set to work, and soon discovered a number of illuminating facts. It appeared that Mr. Waggoner, adding generosity to his other virtues, had lately presented one of his staff, an eighteen-year-old girl, with a trip to Denver. Nor were his motives dishonourable, for, though he went to Denver the same week, he took his wife with him and made no attempt to force his company on the girl. But (she said) on the evening of Friday, 30th August, two days after he had left

for New York, she was approached by a stranger who handed her six coded telegrams with a verbal request from Mr. Waggoner to despatch them that evening. These were, of course, the telegrams which had misled the New York banks. Other inquiries made at Telluride revealed that business had been very bad there for some time. The mining industry on which the place chiefly depended for its prosperity was at a standstill; the two principal mines had been bought up by a banking combine which had closed them in order to lessen competition with other mining properties, so that, with the departure of three thousand miners, the population of Telluride had dwindled to a mere one hundred inhabitants. The cattle-raising industry too was in a bad way. Deposits in the Bank of Telluride had fallen by eighty per cent and, but for its president's energy in paying off its debts and his own mysterious credits, it would have been forced into bankruptcy. Thanks to him, however, the Bank of Telluride now faced the world without a care; at least, it would have done so if the State Bank Department of Colorado had not closed it down, pending further investigations.

The detectives discovered also that Mr. Waggoner was taking a well-earned motoring holiday. Moreover, he was talking. Confident that he was technically innocent of law-breaking, he openly admitted to friends that he was in fact responsible for the swindle. His motive, he said, was to save his fellow-townsmen from the collapse of the bank and the loss of their deposits, and to take revenge on the wicked Eastern bankers who had shut down the local mines. The New York banks had ruined Telluride; let them restore its fortunes!

His confidence was shaken, however, when the newspapers announced that a flaw had been discovered in his ingenious scheme: the Federal authorities considered that he could be successfully charged with the offence of using the United States mails with intent to defraud. Certainly, he had been too discreet to send any letters through the mails, while the Denver telegrams, not being sent by post, were not in question; but one of the certified cheques had been posted from New York to Pueblo. This, said the authorities, provided sufficient grounds for the charge, even though the cheque was admittedly a sound one.

A grand jury in New York accepted the official reasoning and issued a warrant for Mr. Waggoner's arrest; he met this new menace by shaving off his moustache and travelling under an assumed name. But he could not disguise a formidable squint, and was soon recognized and arrested in a hotel near

New Castle, Wyoming. Informing the police and their journalistic satellites that he was a modern Robin Hood who had taken from the rich New York bankers in order to help poor Telluride depositors, Mr. Waggoner claimed that he had not profited personally by his altruism: "If this matter is handled properly," he said, "nobody will suffer but me." He must have forgotten that he had paid off his private debts, and he evidently thought that the shareholders in the New York banks—or whichever banks would eventually be held responsible for the half-million dollars—need not be considered.

Unable to provide \$100,000 bail, he was held in custody in New York. It was taken for granted by the Press that, a conviction being otherwise certain, he would plead insanity—this being the stock excuse in America for every offence, from pocket-picking to murder. But, when he was brought into court, he disappointed his admirers by pleading guilty and throwing himself on the mercy of the judge. The prosecution brutally declared that he was a "cold-blooded scoundrel" and that his plea of guilty was intended to save him from being cross-examined about certain other dubious transactions in his banking career, including, they said, the maladministration of an estate of which he was executor.

Mr. Waggoner took exception to these accusations, and again claimed to be a public benefactor. For a long time, he explained, he had fought for his depositors against the villainy of the big banks but, at the beginning of the year, a Denver bank had refused to advance him even the meagre sum of \$5,000, and he saw that only desperate measures could possibly save the Bank of Telluride from its persecutors.

"But why," asked Judge Coleman, who was trying the case, "were you willing to commit so serious a crime for the bank?"

"Because the people of Telluride," Mr. Waggoner answered, "were largely dependent on the bank. It was a matter of duty."

"Did you feel it a matter of duty to defraud other banks?"

"It was a matter of protecting my depositors, people of Telluride whom I knew and did not want to suffer."

"But you state that you were not responsible for the bank's position," the judge pointed out.

"It was a moral obligation," Mr. Waggoner insisted.

"A moral obligation to commit crime?"

"Yes."

It was anticipated that he would be sent to jail for two or three years, but the judge, recalling that Mr. Waggoner had used part of the fraudulent credits to pay his own debts, sentenced him to fifteen years' imprisonment, the heaviest

sentence ever imposed for the offence of using the mails to defraud. Mr. Waggoner, shocked by this severity, promptly asked to be allowed to withdraw his plea of guilty—which, he pointed out, had spared the prosecution the embarrassment and expense of proving that he had really committed a legal offence—and demanded a new trial with a jury. Judge Coleman refused this application, softening his refusal with the information that, after passing sentence, he had recommended to the authorities that Mr. Waggoner should be released on parole after serving five years; to make this recommendation more effective, the judge reduced the nominal sentence to one of ten years. The martyred Mr. Waggoner was removed to Atlanta jail.

Then the real fun began. The six New York banks who had received the telegrams were half a million dollars out of pocket; none of the other banks in New York and elsewhere, through whose books the credits had passed, saw any reason to make this sum good; nor could the original position be restored, if only because Mr. Waggoner's security was no longer acceptable. The Denver banks, of course, washed their hands of the whole business. Eventually the six New York banks joined Mr. Waggoner as co-defendant with the Chase National Bank, the Hanover Central Bank and the Pueblo bank, in a suit for the recovery of the vanished money, and lawyers arrived at the jail to take his deposition. But that great-hearted man still scorned to bow the knee to Baal: with good-humoured firmness he refused to take the oath or to offer the slightest assistance to anybody in clearing up the matter. And there was no way of compelling him to talk!

Despite Mr. Waggoner's refusal to play, the game went merrily on. Bank sued bank, and, as nineteen of them were involved in the affair, there was no lack of suits and cross-suits. It was not until Mr. Waggoner had served half his sentence that the first stage in the litigation ended with a judgment in a Denver court, which upheld the six New Yorks banks' claim against the Bank of Telluride and the Pueblo bank. A second stage then began, which, with its successors, will presumably drag on in the American courts long after Mr. Waggoner and his self-appointed mission as the Robin Hood of the banking world are generally forgotten.

THE PROFESSOR'S MURDER STORY

PERHAPS the most famous medico-legal murder-trial in the nineteenth century began on 19th March, 1850, when Chief Justice Shaw and three other judges of the Massachusetts Supreme Court sat to try John White Webster ("gentleman, master of arts and doctor of medicine of Harvard University, professor of chemistry and mineralogy in Harvard University, lecturer in the Massachusetts Medical College, member of the Massachusetts Medical Society, member of the American Academy of Arts and Sciences, member of the London Geological Society, member of the St. Petersburg Mineralogical Society, etc.") on an indictment containing four counts:

First, "that he in and upon one George Parkman feloniously, wilfully and of his malice aforethought, did make an assault; and that he, the said John W. Webster, with a certain knife which he then and there in his right hand had and held, him the said George Parkman in and upon the left side of the breast of him the said George Parkman then and there feloniously, wilfully and of his malice aforethought, did strike, cut, stab and thrust, giving to the said George Parkman then and there with the knife aforesaid in and upon the left side of the breast of him the said George Parkman one mortal wound of the length of one inch and of the depth of three inches, of which said mortal wound the said George Parkman then and there instantly died."

Secondly, "that he, the said John W. Webster, then and there with a certain hammer, which he the said John W. Webster in both his hands then and there had held, him the said George Parkman in and upon the head of him the said George Parkman then and there feloniously, wilfully and of his malice aforethought, did strike, giving unto him the said George Parkman then and there with the hammer aforesaid by the stroke of the aforesaid in manner aforesaid in and upon the head of him the said George Parkman one mortal wound, of which said mortal wound he the said George Parkman then and there instantly died."

Thirdly, "that the said John W. Webster then and there with his hands and feet him the said George Parkman feloniously, wilfully and of his malice aforethought did strike, beat and kick in and upon the head, breast, back, belly, sides and

other parts of the body of him the said George Parkman, and did then and there feloniously, wilfully and of his malice aforethought cast and throw the said George Parkman down, unto and upon the floor with great force and violence there, giving unto the said George Parkman then and there, as well as by the beating, striking and kicking of him, the said George Parkman in manner and form aforesaid, as by the casting and throwing of him the said George Parkman down as aforesaid, several mortal strokes, wounds and bruises . . . of which said mortal strokes, wounds and bruises he the said George Parkman then and there instantly died."

And lastly, "that he the said John W. Webster . . . him the said George Parkman in some way and manner and by some means, instruments and weapons to the jurors unknown did then and there feloniously, wilfully and of malice aforethought deprive of life, so that he the said George Parkman then and there died."

From which rigmorole the reader will rightly conclude that the prosecution felt confident that Professor Webster had killed Dr. Parkman, but was not at all clear how the murder had been done. This deduction is confirmed by the prosecuting counsel's opening speech.

He stated—what indeed everybody in court knew—that Dr. George Parkman was an elderly and wealthy member of Boston society and the founder of the new Massachusetts Medical College, in which his old friend, Professor Webster, was one of the lecturers. Dr. Parkman had left his home on the morning of Friday, 23rd November, 1849, in good health and spirits; he had called at the Medical College just before two o'clock and never been seen again, despite wide search and the offer of large rewards. Yet he was a man of exceptional punctuality, who never failed to return home for his dinner at half-past two; moreover, he had left a lettuce, intended for an invalid daughter, at a shop near the College at a quarter to two, saying that he would come back for it in a few minutes; but he did not return. The presumption was, therefore, that he had vanished in or near the College.

Two days after the disappearance, counsel continued, Professor Webster called on Dr. Parkman's family; he told them that the missing man had visited him at the College about half-past one to collect a debt, and had left almost at once in his usual abrupt manner. The police concluded from this that somebody had killed Dr. Parkman for the money he was carrying, and that his body would presumably be found somewhere in the neighbourhood of the College; to have a better excuse for

searching the private houses, they went first to Professor Webster's laboratory and, remarking that "We can't believe for a moment, sir, that it is necessary to search your apartments," made a perfunctory examination of the premises. The professor showed them round his rooms, but dissuaded them from examining a small closet, used only by himself, from which a pipe led down into a vault where the waters of the Charles River entered at high tide. The police found no trace of the missing man either in Professor Webster's rooms or in any other part of the College, and they were equally unsuccessful in their visits to the neighbouring houses.

The reason for Dr. Parkman's visit to Professor Webster was explained by the prosecution. Webster, after a prosperous boyhood and a successful career as a student at Harvard, found it difficult to live comfortably on an annual stipend of twelve hundred dollars from his professorship and on the proceeds of the sale of tickets for his lectures at the College. He had therefore borrowed four hundred dollars from Dr. Parkman, with interest at six per cent; unable to discharge this debt, he had raised a further two thousand dollars from Dr. Parkman and some others on the security of his furniture and his collection of minerals. Then, in 1848, the previous year, he obtained another loan of twelve hundred dollars from a brother-in-law of Dr. Parkman, most improperly offering as security the collection of minerals which was already mortgaged in the previous transaction.

Dr. Parkman discovered this fraud and began to pursue the professor with relentless vigour, demanding repayment of both debt and interest and publicly stigmatizing his debtor as a whelp and a dishonourable rogue. The professor played for time, promising meanwhile to hand over all the fees obtained from students attending his lectures. Dr. Parkman, after vainly trying to obtain these fees from the professor's agent, called on Webster on Monday, 19th November, and asked angrily, "Are you ready for me, now, professor?" Webster said, "No, I am not, doctor," to which Dr. Parkman retorted, "Something must be done."

Early on the following Friday morning Webster called at his creditor's house and left a message for Dr. Parkman to come and fetch his money at the College early that afternoon. The same morning Webster told his agent, "You will have no further trouble with Dr. Parkman, for I have settled with him." The settlement, the prosecution argued, was really made a few hours later, not in cash (for the professor did not withdraw a penny from his depleted banking account) but in one or other of the murderous ways detailed in the indictment.

To support this, counsel described the professor's suspicious behaviour after Dr. Parkman's disappearance. Though he had no lectures to prepare, Webster stayed late in his laboratory for several days, locking all the doors to his rooms and even refusing to allow the porter to light fires for him. Nevertheless, fires were burning there day after day, and the professor was extremely busy. In the intervals of his mysterious task, however, he found time to interest himself in Dr. Parkman's fate. He took the trouble, for example, of calling on people who thought they had seen the missing man late on the Friday afternoon, and listened to their stories. He also helped to spread the news that an Irishman had tendered a twenty-dollar bill for a one-cent toll on a local bridge—a fact which, from the notorious financial condition of the Irish colony in Boston, was almost enough to prove the man guilty of murder—and that a medium had clairvoyantly traced a bloodstained cab in which Dr. Parkman had been killed. The College porter, a man named Littlefield, was puzzled by Webster's curious industry and, still more, by his unprecedented gift of a turkey for Thanksgiving Day. "It was the first time that Professor Webster ever gave me anything," he commented.

Taking his wife into his confidence, he entered the professor's locked rooms through a window and, at low tide, broke through the brick wall of the vault under the closet: there, in the presence of police officers, he discovered portions of a human body. The police now searched the professor's laboratory more thoroughly and found other human remains, including a charred portion of a set of false teeth, as well as a pair of Webster's trousers and a pair of his slippers, all spotted with blood. The professor was at once arrested and charged with the murder of Dr. Parkman.

One of the first witnesses, a policeman mellifluously named Derastus Clapp, described the arrest. He said that he and other officers drove to the professor's house and, without telling him of their discovery, asked him to accompany them to the College for another search. As the carriage crossed a bridge, Clapp told Webster that the river had been sounded and a hat found which might belong to Dr. Parkman. By previous arrangement, the carriage then turned off in the other direction from the College, but when Webster drew attention to this, the witness suggested tactfully that the driver was "green," and there was no more conversation till they stopped outside the jail. Then Derastus Clapp said, with a proper notion of dramatic effect, "Dr. Webster, you recollect that I called your attention at the bridge to soundings having been made above and below the bridge.

We have been sounding in and about the College, and have done looking for the body of Dr. Parkman. We shall not look for his body any more, and you are now in custody on a charge of the murder of Dr. Parkman."

The same witness deposed that, in consequence of a paragraph in one of Webster's letters to his family from the jail, mentioning a bundle, he went again to the professor's house. "I asked Mrs. Webster," said Derastus Clapp, "if she had in her possession any particular parcel or package given her by the defendant. Shortly after asking this question, she left the room and presently returned, bringing a bundle of papers. The papers not being articles named in the search-warrant, I requested that they be replaced in the trunk upstairs where they were found, and the trunk brought down. The trunk was brought down, and I requested Mrs. Webster to hand them to me, as I wished to take them to the city, and would give her a receipt for them; which I did." The papers, thus secured by the punctilious Clapp, included two notes of Webster's indebtedness to Dr. Parkman, both of which were marked "Paid"; this word, the prosecution alleged, had been inserted by the professor after murdering his creditor. Moreover, the accounts contained an error in the computation of interest due, which Dr. Parkman would never have made.

Other policemen described Webster's behaviour after his arrest. It appeared that he indiscreetly asked them if they had found "the whole of the body"—which suggested that he knew it had been dissected. He also said, "Nobody has access to my private apartments but the porter, who makes the fire. That villain! I am a ruined man." Then he took a strychnine pill from his vest-pocket and swallowed it; but the police walked him about until its effects wore off, and afterwards took him to the College and confronted him with the human remains. He called for a glass of water but, when it was brought, he could not drink it and snapped at the glass like a mad dog. On the way back to the jail, he asked why the porter had not been interrogated, adding, "He can explain all this; he has the key of the dissecting-room."

Later, the evidence continued, one of the policemen said to Webster, "I pity you and I am sorry for you, my dear sir." To which the professor replied angrily, "Do you pity me? Are you sorry for me? What for?" "To see you so excited," the other answered, with that diplomacy which seems second nature in the Boston police force. "Oh, that's it," said the professor, somewhat reassured. He thought for some time, and added, "That is no more Dr. Parkman's body than it is mine; but how in the

world it came there, I don't know," and, "I never liked the looks of Littlefield, the janitor."

Medical evidence was given by doctors who, like so many other people concerned with the case, had long been friends of both the prisoner and Dr. Parkman. They stated that the remains were parts of a single male body, dissected with a certain degree of skill; the absence of preserving fluid in the veins showed that it had not been taken from the dissecting-room in the College. They had been able to reconstruct the general appearance of the body from these fragments, and agreed that it would resemble the exceptionally tall, thin Dr. Parkman.

One of the doctors was asked about the difficulties of disposing of a corpse. He at once recalled that as a student he had been presented with the body of a pirate: "I built a rousing fire and sat up all night, piling on the wood and flesh, and had not got it consumed by morning. I was afraid of a visit from the police, and by eleven o'clock they gave me a call, to know what made such a smell in the street. I finished it up somehow that forenoon; but I look upon it as no small operation to burn up a body." Yet he apparently continued his experiments, for he went on to say that "there is always a difficulty in getting rid of human remains by fire, on account of attracting suspicion by the smell. I have been called upon by my neighbours or the police several times on this account.

The identification of the remains with Dr. Parkman was corroborated by other witnesses, among them Dr. Oliver Wendell Holmes, who, not yet famous as an author, held a professorship of anatomy and physiology at Harvard named after Dr. Parkman. He had been lecturing at the Medical College at the very moment when, it was suspected, Webster was killing his victim in the room below. Dr. Holmes told the court that he remembered noticing, at the opening of the Medical College three years before, that Dr. Parkman wore a very new, very long and very white set of false teeth similar to those found in the furnace. Then a dentist declared himself positive that the charred fragments were part of a set he had made for Dr. Parkman; the shape of the latter's jaw, he said, was so peculiar that teeth made for it could easily be recognized, even though later improvements had "somewhat defaced the beauty of the teeth."

The calling of Ephraim Littlefield made a stir in court, for it was common knowledge that the defence intended to pin the murder on him. The porter described how his suspicions were roused by the professor's sudden interest in the structure of

of the College vaults and the condition of the furnaces, and by his refusal to have fires lit although he was "a cold-feeling kind of man." These and other circumstances led to Littlefield's lying down in the corridor and, through a gap at the bottom of the laboratory door, watching the professor walk to and fro on his mysterious business. Cross-examined, he admitted that his suspicions did not stop him from making merry on Thanksgiving Day: he attended a ball given by the Sons of Temperance and danced eighteen dances out of the twenty on the programme. He refused to admit or deny that the laboratory was kept locked because the professor had once found him entertaining a card-party there; but he indignantly repudiated the suggestion that his suspicions began to trouble him only after a reward was offered for the discovery of Dr. Parkman's body. Indeed, he disavowed all intention of claiming the reward.

After Littlefield's wife had corroborated his evidence, the court was adjourned over the week-end. The jurors were permitted at their special request to attend divine service under a preacher who, with notable self-sacrifice, undertook not to refer to the trial in his sermon.

When the proceedings were resumed, Dr. Parkman's brother described Professor Webster's visit two days after the disappearance. "What particularly struck me," said the Rev. Francis Parkman, "was the absence of that subdued expression or tone of sympathy in which it is natural for those approaching persons in affliction to speak." Instead, it seemed, the professor had emphasized the fact that "Your brother came to the College at half-past one p.m., and I paid him four hundred and eighty-three dollars and some odd cents." An ironmonger deposed that Webster came to his shop a few days after the fatal Friday and ordered a large tin box, ostensibly for books. It was to be very light, with a single handle at the top; and the professor undertook to solder the top himself. Then a handwriting expert stated that the word "Paid," scrawled across the bills formerly in Dr. Parkman's possession, was written by the prisoner, as also were certain anonymous letters sent to the police during the search. One of these was as follows: "Dr. Parkman was took on Bord the ship *Herculan* and this is al I dare say or I shal be kiled. East Cambrge one of the men give me his Watch but I was feared to keep it and throwed it in the water rightside the road to the long brige to Boston."

On the afternoon of the eighth day of the trial the defence was opened by an advocate who remarked with emotion that he, like so many other people present, had formerly been a pupil of his client. He then argued several more or less incom-

patible propositions. Thus he began by explaining to the jury the difference between murder and manslaughter, suggesting—but not admitting—that Webster might have killed Dr. Parkman in hot blood during an incident provoked by the latter's demands for payment of the debt. Then he claimed that the indictment was faulty because it set out several ways in which Webster might have killed Dr. Parkman though the prosecution could not hope to prove which, if any, of them had actually been employed. Next he denied that Dr. Parkman had been conclusively shown to be dead, or that the remains found in the College were really his. And even if this were conceded, he went on, the case against the professor depended on merely circumstantial evidence; therefore, unless the jury were convinced beyond reasonable doubt that Dr. Parkman had never left the College after his interview with Webster, the whole case against the prisoner collapsed. The professor's attitude, said his counsel, was quite simple: "He knows nothing about it. These are the remains of a human body, but we can no more explain how they came there than the Government can. The defendant stands as each of you would stand if similar remains were found upon your premises, under your foundations or in your workshop."

With these preliminary remarks, counsel described the evidence he proposed to call. First, he would bring witnesses to state that Professor Webster was not at all the sort of man to commit a murder. Such evidence of character, the lawyer agreed, would have no weight against direct evidence, but, when the prosecution's whole case depended on circumstantial evidence, its relevance was obvious. Other witnesses would show that the professor's behaviour after the date of the alleged crime—"his demeanour, his words and his deeds"—were those of an innocent man, "from which also, if I mistake not, you will be satisfied that very little, if any, reliance is to be placed on the testimony of Littlefield." Thirdly and most important, evidence would be called to show that Dr. Parkman had been seen alive in Boston *after* his interview with the professor at the College.

Over twenty witnesses, including Professor Jared Sparks, the new president of Harvard, declared that they had known Webster for a number of years as a peaceful, humane and amiable man. (Their evidence, by the way, contradicts Charles Dickens's statement, made on his second American tour seventeen years later, that "there is, of course, no rational doubt that the professor was always a secretly cruel man.") Three of Webster's daughters and some of his neighbours—all of them convinced of his innocence—deposed that, after Dr. Parkman's

disappearance, the professor showed no signs of agitation but spent his leisure, as usual, in reading, gardening, music and whist. A dentist was called to state that he could find nothing in the charred set of teeth to suggest that they had belonged to Dr. Parkman; he even produced a block from his workshop which, he claimed, fitted the teeth exactly, though it had been prepared for another patient.

Then came the testimony which sought to show that Dr. Parkman had been seen alive after his visit to Webster at the Medical College. One lady saw "Chin"—as she called him, from his protruding underjaw—walking away from the College just before two o'clock. Asked in cross-examination if he might not have turned back after she saw him, she said tartly, "I don't know. I wasn't his keeper." The next witness swore that he saw Dr. Parkman, whom he had known for several years, in another part of the town about a quarter past two: "he had his hands behind him and appeared excited, as if angry about some matter." This man was cross-examined about his eyesight and, while denying that he had ever told anybody that he "could write so finely in the mesmeric state that no one else could read it in the natural state," admitted that, in what he called a "biological" state, he could write in such a manner that the words could only be read in a mirror. This cross-examination had, of course, little direct bearing on his evidence, but it served to make him ridiculous.

A third witness claimed to have seen Dr. Parkman about three o'clock; and a fourth to have met him, walking with a labourer, half an hour later still. A woman and her daughter said they saw him in another part of the town about a quarter to five, the daughter stating that Dr. Parkman passed so close to her that she had to move the bundle she was carrying. A seventh witness thought she had seen him, again in a different place, just before three; but as she was not positive about the day, her testimony was not taken seriously by either side. This concluded the evidence for the defence. Prisoners were not allowed in those days to give evidence.

The prosecution called a few new witnesses in rebuttal, among them a dentist who insisted that the maker of a set of false teeth "could as certainly recognize it as the artist who has spent a week in studying a face and painting it on canvas can tell that the portrait is his work wherever he may see it." Permission was refused, however, to offer evidence that another Boston resident closely resembled Dr. Parkman and was often mistaken for him.

The closing speech for the defence began at noon on the

tenth day of the trial. It followed much the same lines as before: that is to say, counsel not merely put forward arguments against the whole case for the prosecution but offered also a number of alternative solutions for the mystery. 'Thus he recalled that witnesses had deposed to seeing Dr. Parkman long after he had left the College; still, if the jury did not accept their evidence and believed that the remains were really those of Dr. Parkman, then "the Government are bound next to proceed and show that his death was occasioned by violence," for which, counsel claimed, no sufficient proof had been offered to warrant a conviction. However, he went on, if the jury believed that Dr. Parkman died by violence and that Professor Webster was responsible for his death, were they sure that it was a case of murder? There was no evidence of premeditation. Counsel denied the relevance of the prosecution's argument that no sum had been withdrawn by the prisoner from his bank with which to pay Dr. Parkman; his explanation was that Webster had set aside money for this purpose without depositing it in his bank. Ill-feeling caused by the pertinacity of the creditor might have led to an altercation at the College when the money was paid over, followed by a struggle and by the *unpremeditated* death of Dr. Parkman. Imagine Professor Webster's feelings! "We should hope, and perhaps even we would expect that, if parties like these came to combat and the combat went on until it was closed by death, the survivor of the fatal struggle, still in the heat of blood, would have rushed from the place of combat and exclaimed to the first person whom he met, 'God have mercy on me! I have killed my friend! From angry words we came to blows; fuel was added to the flame, and in the heat of passion I smote him to the earth.'"

But, said counsel, instead of making these natural observations, Professor Webster might perhaps have wished to avoid causing pain to his family by such a confession, and might therefore have committed the further imprudence of dissecting and seeking to destroy the body of his friend, to say nothing of such minor follies as sending anonymous letters to the police to throw them off the scent. Wrong as all this procedure might be, the lawyer pointed out, it would not alter the original crime from accidental manslaughter to premeditated murder.

Having advanced these plausible if incompatible alternative solutions, counsel went on to suggest that Littlefield, the janitor, could equally well be guilty of the murder. While, he said, he did not wish to impute homicide against Littlefield, the jury might very possibly feel that the evidence would "more than point a suspicion towards him as the perpetrator of the

crime which is charged against the prisoner at the bar." Was it not curious that Littlefield should claim on such slender grounds to suspect the professor of the murder? Was it not curious that Littlefield's suspicions did not make him search the laboratory until the reward was published, though he had at least three earlier opportunities to do so? Was it not curious that, if he really thought Webster a murderer, he should accept a Thanksgiving turkey from him? ("The turkey was accepted, gentlemen, and with thanks. I confess I can hardly conceive how he could avail himself of it if he believed he was taking it from the red right hand of a bloody murderer. I cannot imagine the sensations with which he sat down to the repast it supplied, on a day when he was to offer grateful thanksgivings to Providence.") Was it not curious that, half-way through his task of breaking into the vault, Littlefield should pause to dance eighteen cotillons? Or had he good reason to believe that the remains were in the vault and would stay there until it pleased him to bring them to light? Yes, and was it not exceedingly curious also that he penetrated the wall at exactly the right spot to come upon the remains, although this bore no direct relation to the outlet of the pipe from the room above? These considerations, Webster's counsel insisted, "cannot but fill the mind with startling difficulties and perplexities in relation to Mr. Littlefield." The jury ought not, therefore, to place any reliance on his testimony.

In conclusion the advocate denied that the professor's behaviour after Dr. Parkman's disappearance had been in the least degree suspicious: on the contrary, all his actions were consistent with innocence. He again appealed to the jury to acquit his client and thus earn a "peace that shall sustain you in life, and be to you a crown of joy in death." His was not one of the happiest orations of legal history, but he did his best.

The Attorney-General of Massachusetts closed for the prosecution. His speech, seasoned with the poetic quotations and hyperbole which, then as now, seem inseparable from American advocacy, set out with deadly force the evidence against the prisoner and answered the various arguments of the defence. In particular, he analyzed the evidence of the people who claimed to have seen Dr. Parkman after his visit to the College, and was able to show that in each case there was good reason for supposing that the witness's recollection of the time or recognition of the man was at fault. Undoubtedly, he said, there was another inhabitant of Boston who resembled Dr. Parkman; besides, if the dead man had in fact been roaming through the city that afternoon, he must have been noticed by

many other people besides the half-dozen called by the defence. Nobody could doubt that the remains were found in the College were those of Dr. Parkman, while the identification of the false teeth by the dentist was overwhelming proof of "the guiding hand of Almighty God leading us to the delivery of the truth."

He repudiated the insinuations against Littlefield, who "has come out of the fiery furnace of an ordeal like this without a trace of fire upon the garment of truth which he has worn." Moreover, his acceptance of the turkey from Professor Webster ought not to be held against him, for "It don't appear that he ate it. But it does appear that he did not dine at home on Thanksgiving Day, so that all the pathos and poetry of my learned friend, about his eating that consecrated meal received from a murderer, is entirely lost."

When at long last the Attorney-General concluded his speech with the inevitable reference to the foundation of Massachusetts by the Pilgrim Fathers, the prisoner was invited to address the court—though not on oath—before the judge summed up. He spoke with complete self-possession for a quarter of an hour, complaining that his counsel had disregarded his instructions and that the prosecution had distorted his most innocent words and actions. He did not succeed in adding anything to his defence, but he stated that the police had, during the trial, received another anonymous letter in the same handwriting as those which they ascribed to him. In a loud voice the professor summoned the writer of the letters to stand forth and declare himself; nobody answered.

The Chief Justice summed up and the jury retired. They began their deliberations with forty minutes of silent meditation, and then offered up a prayer. After these preliminaries they decided to vote on three questions: Were the remains found in the College those of Dr. Parkman? Had he met his death at the hands of Professor Webster? Was the professor guilty of wilful murder? Only when they came to vote on the third question was there any disagreement: one of the jurymen pleaded with the others not to press it. "Can't we stop here?" he said. "Can't the law be vindicated and justice satisfied, if we pause here? Must we take the life of the unhappy prisoner?" But his colleagues reasoned with him until he agreed to vote on this question also. They returned to the court-room after an absence of two and three-quarter hours with a verdict of guilty. Next morning, 1st April, Webster was condemned to death.

An application for a writ of error on various grounds was

entered by the defence, and dismissed some ten weeks later. Webster himself petitioned the Governor of Massachusetts for a review of the case, pleading "entire innocence of this awful crime." He later withdrew this appeal, substituting another in which he admitted killing Dr. Parkman but denied doing so with malice or premeditation: he had killed Dr. Parkman, he said, during a quarrel provoked by the latter's insulting attitude. "I did not expect to be able to pay him when Friday should arrive. My purpose was, if he should accede to the proposed interview, to state to him my embarrassments and utter inability to pay him at present; to apologize for those things in my conduct which had offended him; to throw myself upon his mercy; to beg for further time and indulgence for the sake of my family, if not for my own; and to make as good promises to him as I could have any hope of keeping." But Dr. Parkman would not listen: "he called me 'scoundrel' and 'liar' and went on heaping upon me the most bitter taunts and opprobrious epithets," and thrust his fist into the professor's face. Then, forgetting everything, Webster snatched up a stick and struck his creditor, who fell to the ground dead; in "horror and consternation," the professor confessed, he then attempted to get rid of the body.

The Governor rejected Webster's petition. On 30th August, 1850, a little over nine months after the murder, he was hanged in the courtyard of the prison before an assembly of one hundred and fifty people, including twenty newspaper reporters.

Before his death he apologized to Mr. and Mrs. Littlefield for the suspicion he had cast on their characters, to his lawyers for his complaints about them at the trial, and to Dr. Parkman's family for the crime itself. In a letter to the Rev. Francis Parkman he wrote, "I had never, until the two or three last interviews with your brother, felt towards him anything but gratitude for his many acts of kindness and friendship. That I should have allowed the feelings excited on those occasions to have overpowered me so as to involve the life of your brother and my own temporal and eternal welfare, I can even now hardly realize." There is perhaps a moral in this letter both for hard-pressed debtors and for over-urgent creditors.

For many years the trial of Professor Webster remained a leading case on the value of circumstantial evidence. If there is anyone who still believes that circumstantial evidence is necessarily weaker than the direct evidence of eye-witnesses, he should ponder the fact that, at this trial, the circumstantial

proofs adduced by the prosecution were shown, by the prisoner's own confession, to be much nearer the truth than the statements of witnesses who claimed to have met Dr. Parkman in the street at a time when he was already lying dead in the professor's laboratory. Circumstantial evidence can easily be misinterpreted, but it is certainly not liable to those gross errors of perception into which even the most honest eye-witnesses seem so often to fall.

TRIAL BY NEWSPAPER: THE HALL-MILLS MURDERS

IT is not difficult to see why some of the innumerable murder trials which occur in the United States are picked out for special attention by the newspapers and the public. The Sacco-Vanzetti case was turned into a political occasion; the trials of Thaw and of Leopold and Loeb owed much of their notoriety to the social prominence of the murderers and their victims, while, as I have suggested elsewhere, the converse is apparently true of the trial of Mrs. Snyder and Judd Gray. But what explanation is there for the fact that the Hall-Mills murder case filled column after column on the front page of even the most reputable American newspapers over a period not of weeks, but of years?

It was certainly not due to the social status of the victims. Dr. Hall, it is true, was a clergyman of high local repute, and Mrs. Mills was a member of his choir and the wife of his sexton: but other American clergymen have been murdered, and even committed murders, without their countrymen showing any great interest in their fate; while, if I may venture to generalize from a fairly wide acquaintance with American trials, the wives of sextons, deacons and other such church functionaries seem, as a class, peculiarly liable to be involved in crimes of violence. Why then did editors seize so eagerly on this case and give it so much prominence in their crowded columns? The only explanation I can offer is that the case unfolded itself rather like a serial story. Surprise followed surprise in a daily crescendo of sensation: a score of characters, some of them highly picturesque, started new trails of interest: as one clue failed, another appeared—usually from a source least suspected—and carried the story a stage farther in a new direction. The whole affair provided a wonderful opportunity for a certain type of journalists to exercise their talents, and they took it.

On the morning of Saturday, 16th September, 1922, two bodies were found lying beneath a crab-apple tree at the entrance to De Russey's Lane, a quiet road much favoured by courting couples just outside New Brunswick, a small New Jersey town some thirty-five miles from New York. They were recognized as Dr. Hall, the incumbent of the Protestant Epis-

copal Church of St. John the Evangelist, and Mrs. Mills, one of the more energetic of his congregation.

There was no doubt how they had died: each had been shot through the head and, in addition, Mrs. Mills's throat had been cut. It was also certain that they had lain there dead for at least twenty-four hours, side by side, with the woman's shoulders supported by the clergyman's arm. He was dressed in an ordinary double-breasted suit, and she wore a cheap spotted muslin frock. No struggle had occurred, for the ground was undisturbed. The police, however, found two spent cartridges in the grass, with one of the clergyman's visiting-cards and the torn fragments of what appeared to be passionate love-letters to him in Mrs. Mills's handwriting. His pockets were empty, and his gold watch had disappeared. Any notion of a suicide pact was ruled out by the nature of the wounds, by the disappearance of Dr. Hall's money and watch, and by the absence of weapons beside the bodies. The only sort of clue which might be supposed to point to the criminal was a woman's brooch, found a little distance off.

The police were handicapped by the leisurely week-end habits of the local population, who, though willing and even eager to view the bodies, could not muster a professional photographer to take a picture of the corpses, or a surgeon to perform a proper examination before they were buried. Practically all that was done was to send a portion of the earth where they lay to a laboratory for analysis, in order to decide whether they had been murdered on the spot or killed somewhere else and then carried there. No fingerprints were found on the visiting-card or the letters; and even the brooch was soon claimed by its owner, who proved that she lost it some time before.

The police theory, which was supported by the laboratory's report that the murders must have occurred where the bodies were found, was that Dr. Hall and Mrs. Mills were surprised by a thief or a blackmailer; that the clergyman, afraid to allow Mrs. Mills's letters to fall into strange hands, tore them up behind his back; that the assailant or assailants, misunderstanding his movements and imagining that he was reaching for a weapon, shot him; and that, to make a proper job of it, the murderers shot Mrs. Mills as well and cut her throat. The New York newspapers, however, refused to allow so promising a mystery to be explained so easily. Why ruin a good story? Here was a clergyman murdered with a member of his congregation at an illicit rendezvous under a crab-apple tree in a deserted lane! Love-letters too! Editors scented a drama of passion and

jealousy and, as the representatives of a moral and excitement-loving public, they sent their most ingenious reporters to elaborate the theme: it might run for a couple of days, or a week, or even a month. They little guessed how rich a vein of sensationalism they were tapping.

The first reward of the reporters' labours was a magnificent bag of assorted and sinister clues. Members of Dr. Hall's congregation admitted that his liaison with Mrs. Mills had been suspected by many and roused jealousy in not a few. Farmers who lived in the lonely country surrounding De Russey's Lane had heard, or thought they had heard, screams and shots about half-past ten on the night when the murders were committed. Others had seen motor-cars parked there or speeding back to the city without lights. It was whispered that the nearest building, Phillips Farm, a deserted house which was formerly inhabited by the squires of the neighbourhood, was now a meeting-place for bootleggers and gamblers; had this any relation to the dead couple's fate? The newspaper story grew still more attractive when Mrs. Hall, the clergyman's widow, was questioned.

An elderly lady of eminently respectable appearance, she had married her husband many years before, when she was thirty-seven and he only twenty-eight; her wealthy family had opposed the match. They were not unhappy together. She took part in the social work of his church, and knew the Mills family well; she assured the reporters that no vulgar intrigue could have existed between her husband and Mrs. Mills. At seven o'clock on the fatal Thursday evening, she said, her husband received a telephone call and, after a conversation which she did not overhear, told her that he must go to see Mills about a hospital bill owed by Mrs. Mills, which Dr. Hall, it appeared, had generously undertaken to settle on condition that the sexton made good the money by working in the Halls' garden. When her husband left home, Mrs. Hall added, he took fifty dollars in his pocket and wore his gold watch. The reporters knew that a night-watchman had told the police that he saw a woman in a grey coat enter the Halls' house by a back door some time after midnight on the Thursday night. Mrs. Hall admitted frankly that she was the woman: surprised at the long absence of her husband, she wakened her brother Willie, who lived with them, and went with him to the church to see if Dr. Hall had fallen asleep there. They found the church shut up and in darkness, and, remembering that Dr. Hall had mentioned Mills's name, walked on to the house where the sexton lived. As this too was dark, they returned home, entering by the back door.

Mrs. Hall was asked why she did not report her husband's absence to the police between his leaving home on Thursday evening and being found dead on Saturday morning. She replied that she telephoned on the Friday to the police-station, without giving her name, and inquired if any accidents had been reported; hearing that none had, she prudently decided to say and do nothing which might give rise to gossip. When, on the Friday evening, members of her husband's congregation telephoned for him to attend choir practice, she told them that he had been called out of town; but, becoming seriously alarmed by his second night's absence, she consulted her family lawyer on the Saturday morning, just before the news of the discovery of the bodies was brought to her.

Most of her statements were confirmed by Louise Geist, her seventeen-year-old parlourmaid, by other servants and by her brother, Willie Stevens, who was at once selected by the reporters to play a major role in the tragedy. He was a strange person, both in character and appearance. Fifty years old, short, swarthy, with bushy hair almost like a negro's and a large dark moustache, so short-sighted that he had to wear heavy spectacles, he presented a queer blend of simplicity and eccentricity. In some respects he was far from a fool; in others he was like a child, though, as he insisted on explaining to the reporters, he used a brand of tobacco so strong and malodorous that he was not allowed to smoke it except in his own room. His hobby was to mingle with the local fire-brigade, who accepted him as a kind of mascot and allowed him to wear a home-made uniform resembling theirs. He admitted the possession of a revolver, which he had bought a year or two previously for Independence Day celebrations; it appeared, however, that his brother, fearing that Willie Stevens's patriotic enthusiasm might outrun his discretion, had filed the trigger of the revolver so that it could no longer be used. Willie Stevens, between whom and his strong-minded sister there existed a bond of affection and mutual esteem not unlike that between Mr. Dick and Betsy Trotwood in *David Copperfield*, confirmed her account of the midnight walk to the church and the Mills's house.

A search of the dead clergyman's library produced a number of other love-letters from Mrs. Mills hidden in a bookshelf, and a Press-cutting dealing with the Episcopalian attitude towards divorce. Mrs. Hall denied any previous knowledge of these. The reporters were also thrilled to learn—and proclaim—that both she and Willie Stevens had sent clothes to be cleaned immediately after the murder; by the time the cleaners were

traced, and the disappointing fact was established that the garments were not stained with blood or gunpowder, a new chapter in the serial was ready for publication.

It opened with the questioning of James Mills, the sexton, a cadaverous, round-shouldered and superlatively humble individual. He stated that his wife, to whom he had been married for seventeen years, received a telephone call on the Thursday evening at a friend's house and left home about seven o'clock, ostensibly to do some work in the church. When, later in the evening, she did not return, he assumed that she had gone on to the Parker Home for Incurables to sing to the patients, as he understood she often did on Thursday evenings. (The Parker Home was near De Russey's Lane; it was soon discovered that neither Mrs. Mills nor Dr. Hall had visited it for several months, though they used its name as an excuse for being together.) About half-past two that night, Mills continued, he looked for his wife all over their apartment, even entering his daughter's bedroom; then, thinking that she might have fainted or fallen asleep in the church, he went there in search of her. She was not in the church, and he decided that she must be spending the night with one of her sisters some distance away. No, he said, he had not been anxious about her when she did not come back next day: she often stayed away with her sister. As for the suggestion that she and Dr. Hall had been lovers, why, he esteemed them both much too highly to believe that they had met for any other purpose than to further the good work of the church. Yes, he knew that she sometimes received letters from the clergyman, but he had never been sufficiently curious to inquire about their contents, nor, when he acted as caretaker of the Halls' house during one of their recent absences, did he leave the basement or enter the library where, as now appeared, his wife's love-letters were concealed.

Mills was pointedly asked how he had spent the earlier part of Thursday evening. He replied that he had stayed at home, sitting on the porch till eleven o'clock, when he went to bed. This was corroborated by his daughter Charlotte, his young son, and a family living on a lower floor of the same house. Even the discovery that, for all his protestations of incuriosity, Mills had made inquiries about his wife's telephone calls a few days before the murder did not shake his story.

Thus the movements of Mrs. Hall and Mills on the night of the murder were accounted for; and in the absence of confessions from the local underworld, favourite members of which were brought in by the police and questioned with official

tact and thoroughness, the case seemed at one moment likely to fade out of the front pages of the newspapers. Fortunately for their readers, however, it was given a fresh start when the young man and woman, Raymond Schneider and Pearl Bahmer, who, searching for mushrooms, had found the bodies on the Saturday morning, now confessed to seeing them also on the Friday evening. (These two people quickly provided juicy morsels of scandal for the Press. Schneider had deserted a newly wed wife for Miss Bahmer, while her domestic life was troubled by the amorous proclivities of her father.) Moreover, the girl now described the dead clergyman as lying on the ground with his watch-chain in full view—which meant that he had been robbed long after his death; and Schneider accused a friend, Clifford Hayes, both of the murders and of robbing the corpses. Hayes was at once arrested, and Schneider detained as a material witness. Pearl Bahmer, whose statement about the watch-chain was disbelieved because the clergyman wore a double-breasted jacket, was sent to a convent for protection; and her unnatural father saved himself from further publicity by dying a natural death.

This interlude was followed by the entrance into the story of its most extraordinary character, Mrs. Jane Gibson, a pig-farmer, otherwise known as Mrs. Easton. As her real name is hard to ascertain—she said she was married to a man named Easton, but could not remember where or when the ceremony had occurred—it will be convenient (and appropriate) to refer to her as the "Pig Woman," the nickname at once conferred on her by the newspapers. Her narrative varied from time to time, but some of its main features were constant. She lived, she said, with her eighteen-year-old nephew—who quite possibly, she later admitted, was her son—in a ramshackle farmhouse a mile or so from the crab-apple tree in De Russey's Lane, and devoted herself to raising pigs. A few nights before the murders a thief robbed her of two rows of Indian corn and, hoping to trap him if he returned for more, she tied a dog to a tree between her shanty and the road. About nine o'clock on the Thursday night the dog barked; she went to investigate but found nothing amiss. Three-quarters of an hour later—she knew the exact time from the distant sound of a punctual omnibus—she heard a squeaking cart approach her cornfield, whereupon she saddled her mule, Jenny, and rode out to intercept it. But apparently the thief heard her coming, for, by the time she arrived, the cart was driving away into De Russey's Lane; she followed it for some distance until it turned off towards the city. Then she saw a motor-car with two passengers, a tall, white-haired woman

and a man with bushy hair whom she at first took to be a negro. Returning home, she found that she had lost a slipper and decided to go back to De Russey's Lane in search of it. She heard a man's voice and a woman's screams and saw the same white-haired woman and bushy-haired man standing beneath the crab-apple tree. Something lay on the ground beside them.

Encouraged by the reporters, the Pig Woman began to embroider her account. Soon she remembered seeing two women and two men quarrelling in the lane: the white-haired woman had cried, in tones of exaggerated refinement, "Explain these letters!" There was a struggle: something gleamed in the moonlight; a man shouted, "Let's go!" The tall, white-haired woman cried, "Oh, my!" The other woman screamed; four shots were fired, and the Pig Woman decided that she had better retire. To the inevitable question why she had never reported all this to the police, the Pig Woman answered primly that she had not wished to be dragged into an unsavoury case. The reporters showed her photographs of Mrs. Hall and Willie Stevens, and she at once identified them as the white-haired woman and the bushy-haired man. But, despite her confident recognition of Mrs. Hall's photograph, she failed to recognize her in the flesh; as if to make up for this lapse, however, she soon identified Mrs. Hall's older brother, Henry Stevens, and a cousin named Henry Carpenter as members of the now constantly increasing party in the lane.

As a result of the Pig Woman's statements, Clifford Hayes was released and his accuser, Schneider, sentenced to two years' imprisonment for perjury. Then, just when suspicion was turning once more against Mrs. Hall and her family, a fresh complication appeared in the discovery that Mills had sold to a New York newspaper a number of the clergyman's love-letters to Mrs. Mills. No trace of those letters had been found when the Mills house was searched, and the sexton had professed to know nothing of their existence. Where had he found them—and when? Suspicion veered away again from Mrs. Hall.

The next chapter of the serial began with the presentation of the police case to a grand jury at the end of November, ten weeks after the crime. The grand jury, with shocking indifference to the interests of the newspapers, decided to sit in secret. A horde of journalists and photographers surrounded the courthouse; and a New York editor, learning that some of the jury's faces could be seen through a window, sent down a lip-reader to report what they were saying. His ingenuity, like the grand jury's secrecy, seems to have been wasted, because most of the

witnesses had already told their stories to the Press and were delighted to do so again on the way out of the courtroom. It was thus easy to reconstruct what happened before the jury.

The witnesses on the first day consisted of three local newspaper reporters, a doctor, four police officers and one or two other people, including Pearl Bahmer, who was brought from her convent to testify; all of these described the finding of the bodies. Next day two more policemen, four more doctors and three undertakers were called, as well as the analyst who had examined the soil under the crab-apple tree, two men who said they had heard shots, two women who thought they saw Dr. Hall and Mrs. Mills walking towards De Russey's Lane, and two tram drivers who believed they recognized Mrs. Mills as a passenger. Schneider was fetched from the county jail to tell his story and to deny that he had stolen Dr. Hall's watch. After these comparatively tedious preliminaries more thrilling evidence was given. Mrs. Voorhees, a local farmer's wife, stated that two cars passed her near the scene of the murder about ten o'clock; she heard men and women wrangling and asking such questions as "What are you doing here?" and "What does this mean?" She also heard two shots before the cars drove away towards the city. Mrs. Fraley, who lived in the nearest inhabited house to the crab-apple tree, said that she and her daughter also heard shots. They had attached no importance to them, however, thinking that "them Italian bootleggers are at it again on the Phillips place." As she left the court Mrs. Fraley performed what must, in the circumstances, be regarded as scandalous contempt of court: she punched the jaw of a Press photographer.

A bridge-tender testified that he heard shots and screams on the Thursday night, and saw three cars pass; and a clerk remembered hearing shots at about half-past ten. A motor-omnibus superintendent said he saw a Ford car with two men in it driving past the Phillips Farm just before midnight, and a sedan car parked near it. The Pig Woman told the latest version of her story; and another woman, who had been counted on by the newspapers to give startling evidence, disappointed them by saying that she had forgotten what it was!

Mrs. Hall was not invited to give evidence—clear proof that she was under suspicion—but she insisted on going to the courthouse and sitting outside the barred door of the jury's room. Willie Stevens's name was introduced by the chief of the fire-brigade, who reported that the eccentric fellow told him, the day before the bodies were found, that "There's been trouble at our house. Something's going to pop." But, as if to balance

this too obvious clue and to sustain the mystery, Louise Geist, Mrs. Hall's parlourmaid, testified that her mistress was at home both before and after half-past nine on the Thursday evening, while the Halls' chauffeur denied that their car was used on the night of the murders.

All public expectations that Mills's story would break down vanished when his daughter and their downstairs neighbour corroborated his statement that he had not gone out during the evening. Mrs. Mills's two sisters, however, offered succulent evidence. Both had known of her affair with Dr. Hall: one added that Mrs. Mills had asked her to provide an alibi if awkward questions were asked about her going to New York with him, while the other alleged that Mrs. Mills had repeated to her a conversation with Mrs. Hall, in which the clergyman's wife said, "Eleanor Mills, you are making my life very unhappy." This brought interest back again to Mrs. Hall.

The chapter ended on 28th November when the grand jury, after an hour's private discussion, issued the following statement to the assembled reporters: "For reasons which seem to them sufficient and controlling, the grand jury took no action on the Hall-Mills murder case and laid the matter over. This does not necessarily mean that the matter cannot be taken up by this or a subsequent grand jury."

It is difficult to see what other decision they could possibly reach. There was no trace of reliable evidence to link any member of either the Hall or the Mills family with the crime; all other suspects had been eliminated; only the Pig Woman's dubious testimony contradicted the original police theory that the murders were the work of an armed thief or blackmailer. Mrs. Hall, on whom the full weight of newspaper calumny had fallen, heard the jury's decision with natural relief. Mills, on the other hand, expressed his dissatisfaction, but consoled himself and the reporters with the thought that, whatever the grand jury might decide, "there is a Higher Judge."

He was right, though not presumably in the sense which he intended. The higher judge in the Hall-Mills case was the sensational Press of New York, which, reluctant to leave this juicy mystery while a drop of sensation might still be squeezed from it, reopened the whole affair some three and a half years later. In the early part of 1926 the editor of a "tabloid" picture paper learned that Louise Geist, the Halls' parlourmaid, who had married since the murders, was having trouble with her husband. He stated, in his petition for annulment of the marriage, that she had been bribed by her employers to give

false evidence to the police and the grand jury, that she and Mrs. Hall and Willie Stevens had driven out to De Russey's Lane on the evening of the murders, and that she had either participated in the crime or been an accessory to it. The editor claimed also to know on good authority that a member of Dr. Hall's congregation had visited a New York private detective and, with the explanation that his conscience would not let him rest, confessed that he himself had visited De Russey's Lane that night with a young woman: they heard shots and met a man—either Henry Stevens, Mrs. Hall's brother, or Henry Carpenter, her cousin—who brandished a revolver and frightened them away. The newspaper also accused some of the police officials originally in charge of the investigations of taking bribes and destroying evidence against Mrs. Hall.

The editor's revelations so impressed the Governor of New Jersey that he ordered the case to be reopened. Mrs. Hall was arrested and charged with the murders; she was released on heavy bail two days later, but Willie and Henry Stevens and Henry Carpenter were arrested. They were at once identified by the Pig Woman (fresh from her appearance with her mule, Jenny, at a New York circus) as members of the party in the lane. To make matters a little more complicated, a prisoner in Joliet jail, near Chicago, suddenly confessed to the murders: his attempt to share the limelight, however, was frustrated by everybody's refusal to take him seriously.

Senator Simpson was appointed to prosecute. He had various brushes with a grand jury, whose foreman on one occasion confided to the Press that he regarded the Senator as a liar, but a true bill was at last returned against the prisoners. The corpses of Dr. Hall and Mrs. Mills were exhumed and, after a newspaper had failed to get official permission for a radio commentary on the proceedings to be broadcast, the trial of Mrs. Hall, Willie Stevens and Henry Stevens began at Somerville on 3rd November, 1926, before Justice Parker and Judge Cleary; Henry Carpenter was to be tried separately. The preliminary proceedings were held up, to the delight of the spectators and the exasperation of the reporters—among them Mills's daughter, representing a newspaper syndicate—by an individual who, summoned as a jurymen, explained his views on circumstantial evidence at prodigious length. When at last he was excused and the jury completed, some new characters were introduced into the story by the prosecution.

A Mr. and Mrs. Dickson, who lived some distance from De Russey's Lane, testified that they were visited at about half-past eight on the evening of the murders by a strange individual,

who told them that he was an epileptic and asked the way to the Parker Home, where, he said, his sister had driven him and put him out of her car. They identified their visitor as Willie Stevens! But in cross-examination they stated that the man was not wearing glasses: this showed that, whoever he was, he was not Willie Stevens, who could not move a yard without his special lenses. Nor did the hour mentioned by these witnesses fit the rest of the prosecution's case. Then the man was called who was supposed to have unburdened his conscience to a New York detective, but, to the horror of the prosecution, he flatly denied having made the statements attributed to him by the newspapers: he had not seen Henry Stevens or Henry Carpenter in De Russey's Lane, and he had not been told by either of them to go away.

Undeterred by these setbacks, the prosecution now produced the visiting-card found beside the bodies, and claimed that it bore an unmistakable thumbprint of Willie Stevens. While fingerprint experts were giving evidence, Senator Simpson was handed a note informing him that the Pig Woman had been taken ill and would be unable to give evidence. The Senator suggested to the judges that the court should adjourn to the Pig Woman's hospital and take her evidence at her bedside. Counsel for the defence objected, but the judges, apparently determined that the trial should be a success, left the bench and hurriedly visited the hospital. They returned half an hour later, announcing that the state of the Pig Woman's kidneys was indeed serious. The newspapers, alarmed at the possibility that this popular favourite might not appear in court, gave prominence to the statement of a New York psychologist who, though he had never examined the Pig Woman, diagnosed her condition as "chiefly psychological" and confidently undertook to ensure her speedy return to public life.

His offer was not accepted and the trial continued, the defence showing, beyond the possibility of doubt, that Willie Stevens's thumbprint had been fraudulently superimposed on the visiting-card. Thus a third pillar of the prosecution's case was shattered. And even the charges against the police of corruption and suppressing evidence were proved to be groundless.

James Mills was expected to give startling evidence, and he did not disappoint his nation-wide audience. Mrs. Hall, he told them, called on him before the bodies were found and, to his suggestion that her husband and his wife had eloped, uncompromisingly replied that they were dead. He was severely cross-examined by the prisoners' counsel, who extracted some

unexpected admissions, including a confession that, despite his original denials, he had read "a good part" of certain affectionate letters sent to his wife by her lover. But when he was asked if he had told a detective four years previously that he had quarrelled with his wife because of her affection for Dr. Hall, Mills said that he could not remember. The love letters of the dead pair were read out in court and provided a tasty dish. Then Senator Simpson called Louise Geist, the former parlourmaid, whose matrimonial troubles had precipitated the reopening of the case. It was confidently expected that her evidence would restore the shaken fortunes of the prosecution, but again the Senator was disappointed. She declared that her husband's affidavit was nonsense: he had married her, she said, only in order to learn from her the secret of the murders and, discovering too late that she did not know it, was revenging himself by bringing these charges against her. She again denied that Mrs. Hall could have overheard the clergyman's last telephone conversation with Mrs. Mills; and she repeated the evidence she gave at the original inquiry about her mistress's movements that night.

The presence of the Pig Woman was now absolutely essential if public interest was to be sustained. At the beginning of the third week, therefore, a hospital bed was placed in court and she was carried in on a stretcher, attended by a doctor and a nurse. It was a magnificent entry and justified her boast to the reporters that she would be the "Babe Ruth of the trial"—a reference to the most popular baseball player of the day. She lay under the sheets with the doctor's fingers on her pulse, and replied in a weak voice to the questions of counsel. She retold her old story about the thief and the dog and the squeaking cart and Jenny the mule and the lost slipper, and identified Mrs. Hall and her two brothers as members of the group she had watched "talking, talking, talking, swearing and swearing and mumbling and mumbling and mumbling" under the crab-apple tree in the lonely lane. Once again she mimicked the refined voice of the white-haired woman crying, "Explain these letters!" and added the information that she saw a revolver in one of the brothers' hands. All the time she was testifying, her aged mother, who had been unearthed by the defence and provided with a seat near her, remarked loudly, "She's a liar, a liar, a liar. That's what she is, and what she's always been." The mother was undoubtedly right.

The defence had very little to answer. Mrs. Hall repeated her account of the Thursday evening and the following days, which was supported in all essential details by witnesses of good

standing and disputed only by the Pig Woman. Eight reputable witnesses corroborated Henry Stevens's statement that he was sixty miles away at the time of the murders. And even Willie Stevens, whose evidence was joyfully awaited, showed himself more than a match for the prosecution. He began magnificently.

"How old are you, Mr. Stevens?" his counsel asked.

"I am forty-four," Willie Stevens replied, peering through his vast glasses and clutching a yellow pencil from which he had refused to be parted since the beginning of the trial.

"Isn't it fifty-four?" suggested the lawyer.

"Yes," said Willie Stevens.

But he went on to tell a coherent story, repeating his account of being wakened by his sister in the dead of night and accompanying her to the church and the Mills's house. Senator Simpson could not shift him in cross-examination. In fact, the witness scored heavily off his tormentor when, battered with questions about where he was at a certain time, he blandly asked the Senator, "If a person sees me go upstairs and doesn't see me come downstairs, isn't that a conclusion that I was in my room?"

"Certainly," the Senator agreed.

"Well," Willie Stevens pointed out, "that's all there was to it."

So complete was the failure of the prosecution to prove a single one of the grounds on which it had reopened the case that, towards the end of the proceedings, nobody any longer took them seriously; and Senator Simpson vainly appealed to the judges to order a new trial on the ground that the jurymen were not paying proper attention to his arguments. The last speeches on both sides added only a few extravagances. The defence suggested, for example, that the Pig Woman might have shot Dr. Hall and Mrs. Mills and cut the latter's throat under the erroneous impression that they were the thieves who had stolen her corn. Not to be outdone, Senator Simpson declared that Mrs. Hall's lack of emotion at the death of her husband showed that she was a Messalina, a Lucretia Borgia and a Queen Mary. "Has she ever batted an eyelash?" he asked the jury passionately. And he took the opportunity to congratulate the newspapers on their public spirit in not allowing her to escape trial.

The jury retired on 3rd December and, after deliberating for five hours—though they never revealed what on earth they had found to discuss—returned a verdict of not guilty. Mrs.

Hall, her brothers and her cousin were promptly released. Mills remarked with unusual self-assertion that he was not surprised at the verdict; money, he said, could buy anything. While his innuendo was unfounded, it is certain that the defendants spent many thousands of dollars in rebutting the baseless charges brought against them. The expenses of the prosecution were still greater, as the tax-payers of New Jersey soon discovered. But, on the other hand, the circulation of the tabloid newspapers had been enormously stimulated, so that they at least could consider their public-spirited enterprise to be justified by results, though unfortunately the mystery of the murders still remains unsolved.

THE END

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